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MAGNA CHARTA, THE PETITION OF RIGHT,

AND THE BILL OF RIGHTS.

WITH HISTORICAL COMMENTS, AND REMARKS ON THE PRESENT POLITICAL EMERGENCIES.

BY E. S. CREASY, M.A.,

BARRISTER-AT-LAW, PROFESSOR OF HISTORY IN UNIVERSITY COLLEGE, AND FORMERLY FOR SEVEN YEARS FELLOW OF KING'S COLLEGE, CAMBRIDGE.

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THE

TEXT-BOOK OF THE CONSTITUTION.

WHATEVER may be thought of the execution of this work, I have little fear of the chief portion of it being censured, so far as regards the design. An attempt to arrange in a simple form, and to place before the public, in a few easily accessible pages, the great principles of our Constitution,—to prove their antiquity, to illustrate their development, and to point out their enduring value,—will surely, in times like the present, not be discouraged as blameable; and, in the strange dearth of really useful treatises on this all-important topic, it will hardly be slighted as superfluous.

I am aware that I assume a more questionable and difficult function in proceeding to consider what political measures should now be taken, in order that our Constitution may extend its benefits more amply, and more securely for the future. But this branch of the subject is intimately connected with the other; for, the same earnest and long-continued studies which teach the historical inquirer to believe in and venerate the great principles of the English Constitution, also display to him the workings of its normal law of progress, its plastic power of self-amelioration and expansion, through which alone we may hope to see the exigencies of the present and of the coming time supplied, not only without danger, but with additional security to the fundamental institutions of ages past.

It is in the first place necessary to have a clear idea of what we mean by the word "Constitutional." For, there are few terms in our language more laxly employed than this word and its converse in party political discussion. And so very vague are the ideas which many entertain of the English Constitution, that when the opponent of a particular measure or a particular system of policy cries out that it is unconstitutional, it generally means little more than that the matter so denounced is something which the speaker dislikes.

Still, the term is susceptible of full and accurate explanation, though it may not be easy to set it lucidly forth without first investigating the archæology of our history, rather more deeply than may suit hasty talkers and superficial thinkers, but with no greater expenditure of time and labour than every member of a great and free state ought gladly to bestow, in order that he may rightly comprehend and appreciate the polity and the laws *in* which, and *by* which he lives, and moves, and has his civic being.

Some furious Jacobins, at the close of the last century, used to clamour that there was no such thing as the English Constitution, because it could not be produced in full written form like that of the United States, or like those with which Sièyes crammed the pigeon-holes of his bureau, to suit the varying phases of the first years of the French Revolution. And, as the trade of Constitution-mongering is again thriving on the Continent, perhaps some who see that other nations are providing themselves with full written formulas of social and political rights and processes, in all the paraphernalia of article, section, supplement and proviso, while England is content with her old statute-book, and old traditional government and laws—may think that the term "English Constitution" means nothing beyond the no-meaning of designating the actual state of things in the country at the particular moment when the phrase is used, and which, of course, is liable to vary with the varying hour.

In order to meet these cavils, there is no occasion to resort to the strange dogma of Burke, that our ancestors, at the Revolution of 1688, bound, and had a right to bind, both themselves and their posterity to perpetual adherence to the exact order of things then established; nor need we rely solely on the eulogies which foreign as well as native writers, a hundred years ago, used to heap upon our system of government. Those panegyrics, whether exaggerated or not, were to a great extent supported by reasonings and comparisons, which are now wholly inapplicable. But, without propping his political creed on them, an impartial and honest investigator may still remain convinced that England has a Constitution, and that there is ample cause why she should cherish it. And by this it is meant, that he will recognise and admire, in the history, the laws, and the institutions of England, certain great leading principles, and fundamental political rules, which have existed from the earliest periods of our nationality down to the present time; expanding and adapting themselves to the progress of society and civilisation, advancing and varying in development, but still essentially the same in substance and in spirit.

These great primeval and enduring principles are the principles of the English Constitution. And we are not obliged to learn them from conflicting speculations or suppositions; for they are imperishably recorded in the Great Charter, and in the Charters and Statutes connected with and confirmatory of Magna Charta, with which the volume of the laws of the land auspiciously commences. In Magna Charta itself, that is to say, in a solemn instrument deliberately agreed on by the king, the prelates, the great barons, the gentry, the burghers, the yeomanry, and all the freemen of the realm, at an epoch which we have a right to consider the commencement of our nationality, we can trace all these great principles, some in the germ, some more fully revealed. In the statute entitled *Confirmatio Chartarum*, which is to be read as a supplement to its great original, we discern these principles manifested with additional clearness. And thus, at the very dawn of the history of the *present* English nation, we behold the foundations of our great political institutions imperishably laid, and their essential forms proclaimed.

These great primeval and enduring principles of our Constitution are as follows :—

The Government of the Country by an hereditary sovereign, ruling with limited powers, and bound to summon and consult a Parliament of hereditary Peers, and of elective representatives of the Commons.

That the Subjects' money shall not be taken by the Sovereign, unless with the Subjects' consent, expressed by his representatives in Parliament.

That no man be arbitrarily fined or imprisoned, or in any way punished, except after a lawful trial.

Trial by Jury.

That justice shall not be sold or delayed.

These great constitutional principles can all be proved, either by express terms, or by fair implication, from Magna Charta, and its above-mentioned Supplement.

Their vigorous development was aided and attested in many subsequent statutes, especially in the Petition of Right and the Bill of Rights ; in each of which the English nation, at a solemn crisis, solemnly declared its rights, and solemnly acknowledged its obligations: —two enactments which deserve to be cited, not as ordinary laws, but as constitutional compacts, and to be classed as such with the Great Charter, of which they are the confirmers and the exponents.

Lord Chatham called these three statutes "The Bible of the English Constitution," to which appeal is to be made on every grave political question. The great statesman's advice is still sound. It deserves to be considered by subjects as well as by princes ; by popular leaders without the walls of Parliament, as well as by Ministers within them. In the present period of general commotion, when startling changes in our system of government are advocated by still more startling means, while at the same time there is a general feeling of the necessity for *some* change being effected, these texts of our Constitution deserve peculiar study, in order that we may learn from them, First, What our Constitution is, and whether it deserves to be earnestly upheld by us as a national blessing, or ought to be looked on as an effete incumbrance, whose euthanasia we should strive to accelerate ; and Secondly, That when we have convinced ourselves of its merit, we may be able to test proposed measures by their conformity with or hostility to its principles.

It is remarkable how few even of educated Englishmen possess, or have ever read these three great statutes. Magna Charta, in particular, is on everybody's lips, but in nobody's hands ; and, though perpetually talked of, is generally talked of in utter ignorance of its contents, beyond a vague impression that it prohibits arbitrary imprisonment, and is in favour of Trial by Jury. If the publication of this little Treatise tend to familiarise any of my fellow-countrymen with its true letter and spirit, I shall assuredly not think that my labour in compiling and in commenting has been thrown away.

A remark has been made in the preceding page respecting the epoch of the Great Charter, the correctness of which every reader may not admit as self-evident, but which is of vital importance in estimating the full nature and value of that great corner-stone of our

Constitution. It has been said that Magna Charta is coeval with the commencement of our true nationality ; in other words, that we have had our present Constitution, as represented in Magna Charta, throughout the whole period of our true national history. This is best explained at the outset, though at the risk of enouncing what to some may be historical truisms.

Our English nation is the combined product of several great elements of population. Of these there have been four principal ones—the Saxon, the British (*i. e.* the Romanised Celtic), the Danish, and the Norman. The Saxon is mentioned first, as being undoubtedly the most important, and as constituting the chief fountain with which the other sources have mingled, forming at last in their complete junction the English people such as it has since been, and such as it now is. But each of the four elements has largely modified the rest, and each has exercised important influence in determining our national character and our national career. To take the last of them in point of date—by the influx into this island of the victorious Normans, (that is to say, of Scandinavians by origin, who had for 150 preceding years been settled in France,) the former Government in this island was overthrown ; new divisions of rank and class were introduced ; new tribunals and new laws regulated property and person ; almost the whole of England was parcelled out to new men to hold on new terms, and a martial nobility of the bravest and most energetic race that ever existed, was far and wide planted as a dominant class in the land.*

Moreover, although the coming over of the Normans made up the last great element of our population, many years elapsed before it coalesced with the rest. For upwards of a century after the Conquest,

* Gibbon in his seventh volume, sketches the Norman character and early conquests with his usual power and splendour. He ratifies the comparison between the Normans and Saxons drawn by William of Malmsbury ; and finally pronounces that "England was assuredly a gainer by the Conquest." Sismondi, also, ("Histoire de Français," vol. iii., p. 174), has brilliantly and powerfully portrayed the superiority of the Normans to the degenerate French noblesse, and the crushed and servile Romanesque provincials, from whom they wrested the district in the north of Gaul, which still bears the name of Normandy. It was not merely by extreme valour and ready subordination to military discipline, that the Normans were pre-eminent among all the conquering races of the Gothic stock, but also by an instinctive faculty of appreciating and adopting the superior civilisations which they encountered. Thus Duke Rollo and his followers readily embraced the creed, the language, the laws, and the arts which France, in those troubled and evil times with which the Capetian dynasty commenced, still inherited from Imperial Rome and Imperial Charlemagne. "Ils adoptèrent les usages, les devoirs, la subordination que les capitulaires des empereurs et les rois avoient institués. Mais ce qu'ils apportèrent dans l'application de ces lois, ce fut l'esprit de vie, l'esprit de liberté, l'habitude de la subordination militaire, et l'intelligence d'un etat politique qui conciliât la suretè de tous avec l'indepondence de chacun." So also in all chivalric feelings, in enthusiastic religious zeal, in almost idolatrous respect to females if of gentle birth, in generous fondness for the nascent poetry of the time, in a keen intellectual relish for subtle thought and disputation, in a taste for architectural magnificence, and all courtly refinement and pageantry, the Normans were the Paladins of the world. Their brilliant qualities were sullied with many darker traits of pride, of merciless cruelty, and of brutal contempt for the industry, the rights, and the feelings of all whom they considered the lower classes of mankind. Still it is to the Norman element in our nation, that much of England's greatness and glory is due. And I believe that most of the free institutions which we justly

Anglo-Norman and Anglo-Saxon kept aloof from each other; the one in haughty scorn, the other in sullen abhorrence. They were two peoples, though living in the same land. It is not until the thirteenth century, the period of the reigns of John and his son and grandson, that we can perceive the existence of any feeling of common nationality among them. But in studying the history of these reigns, we read of the old dissensions no longer. The Saxon no more appears in civil war against the Norman, the Norman no longer scorns the language of the Saxon, or refuses to bear together with him the name of Englishman. No part of the community think themselves foreigners to another part. They feel that they are all one people, and they have learned to unite their efforts for the common purpose of protecting the rights and promoting the welfare of all. The fortunate loss of the Duchy of Normandy in John's reign, greatly promoted these new feelings. Thenceforth our barons' only homes were in England. One language had, in the reign of Henry III., become the language of the land, and that, also, had then assumed the form in which we still possess it.* One law, in the eye of which all freemen are equal without distinction of race, was modelled, and steadily enforced, and still continues to form the groundwork of our judicial system.†

With this period our true nationality commences; for our history from this time forth is the history of a national life, then complete and still in being. All before this period is a mere history of elements, and of the processes of their fusion. The first great event of this period, the first effort of this awakened English spirit, was the obtaining of Magna Charta *by* all and *for* all the freemen of the land. The constitutional principles promulgated therein were at once the first fruits and the guarantees of our nationality; and we are enabled to appeal to them as embodying the terms of an original contract between

cherish, are quite as much due to the Normans as to the Saxons. "C'est peut-être à la Conquête des Normands que l'Angleterre à du ses libertés," is the expression of Guizot ("Essais sur l'Histoire de France," vi. Essai, Chap. prem.) And whoever will peruse the admirable analysis of the origin of our Representative systems which that great historian introduces near the close of the Treatise referred to, and will also study in "Palgrave's History of the English Commonwealth," the Norman origin of our Trial by Jury, will feel little doubt of the importance and the ultimate blessing of the Norman Conquest; fearful as were the sufferings which it caused to some generations.

I have dwelt on this topic at greater length, on account of the absurd and fallacious tone in which the Norman Conquest is spoken of in some standard works on our history and laws, from which it might be supposed that the Battle of Hastings led to little more than the substitution of one Royal family for another on the throne of this country, and to the garbling and changing of some of our laws through the "cunning of the Norman lawyers."

* The earliest extant specimen of the English language, as contra-distinguished from the Saxon and the semi-Saxon, is the proclamation of Henry III. to the people of Huntingdonshire, A. D. 1258. See "Latham on the English Language," p. 77, 2nd Ed.

† Our Common Law, with its peculiar features of Pleading, &c., assumed its present form in the thirteenth century. See Bracton's Treatise, written in Henry III.'s reign. During the same period, also, Trial by Jury in criminal charges was generally introduced. Some remarks on this will be introduced in an after part of this treatise, in commenting on the provisions of Magna Charta.

King and People in literal truth, and not in the unreal and fallacious sense in which that expression has frequently been misused.

The Charter with which our Statute-book commences, and with which alone the greater part even of professional students are familiar, is not the original Great Charter of John, but is a copy of it, as confirmed by Henry III., with several important modifications and omissions. Both Charters may be seen at length in the original, in Blackstone's admirable tract on the Great Charter ; a work far superior to any of his others in industrious research and sound critical judgment; and in which all the preliminary documents and corroborative instruments connected with Magna Charta, down to its final and peaceful establishment, in the 28th year of Edward I., are chronologically arranged and compared.* In the following pages an English version will be given of the whole of the Great Charter itself, as conceded by John to the host of "God and the Holy Church," as the nobility, the gentry, the yeomanry, and the free burghers of England termed themselves, when they marched against the tyrant and his foreign mercenaries to Runnymede, and laid the foundation of the future liberties of their country, 632 years ago. I will then quote the material provisions of the *Confirmatio Chartarum*, and proceed to point out how the great constitutional principles which I have before enumerated, are all embodied in these primary manifestations of our nation's will.

It may, however, be useful to remind some readers, before they proceed to the perusal of the Great Charter, that they will find in it many provisions that have lost their practical importance with the decay of the feudal system, the tyranny of which they were designed to mitigate. But their value was inestimable at the time; and a right understanding of the oppressiveness of feudalism under the Anglo-Norman kings, is essential not only for the purpose of studying the history of the time, but for the correct discernment and appreciation of the origin and nature of many of our most enduring institutions. Under the feudal system, as the Norman Conqueror established it in this island in an intensity unparalleled on the Continent, the king, as lord paramount of his barons, and of all who held their lands by military tenure, exacted of them military service, or a pecuniary payment in lieu thereof, called *escuage* or *scutage*, whenever he thought fit, and for which the constant wars and troubles of the times always furnished a ready excuse. Other exactions of money payments, under the title of *aids*, were continually demanded. The heir, on succeeding to his estate, was called on for a payment, under the title of "relief." If he was a minor, the lord took possession of his land as guardian, and used it or abused it as he pleased till the heir attained his majority. The lord, also, claimed the right of tendering his ward a husband or wife ; and if the ward declined to marry the person so selected, the ward forfeited to the lord such a sum of money as the alliance was considered worth. The exercise of these claims, and various others of a similarly oppressive character, was

* The only defect of any consequence in this *chef d'œuvre* of Blackstone is, that he does not reject with sufficient decision the myth of the Great Charter having been copied from a lost and found Charter of Henry I.

regulated by the mere balance of strength between the king and his vassals. The landholders of inferior rank, who held their lands by socage tenure, as it was termed, *i.e.*, the modern freehold tenure, were less subject to these exactions, though far from being secure from some of them. Most of the great towns and cities belonged to the king, as feudal lord, who levied sums of money on them, called talliages, at his pleasure. Many, however, of the English boroughs had already purchased charters and liberties from the Crown, and had regained some of their municipal rights of local self-government. All these classes had grievances to redress, and the Great Charter contains remedial measures applicable to them all. The more important of these, that is to say, those which, besides redressing an immediate wrong, contain the germ of a permanent right, will be distinguished in the following translation of the Great Charter by a difference in type. And the reader's attention will be similarly directed to those clauses which at once lay down broad enduring principles of free government, the operation of which is general as humanity itself, and is unlimited by time or place.

Magna Charta.

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy, Aquitaine, and Count of Anjou, to the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries of the Forests, Sheriffs, Governors, Officers, and to all Bailiffs, and others his lieges, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our progenitors and successors, and unto the honour of God and the advancement of Holy Church, and amendment of our Realm, by advice of our venerable Father, STEPHEN, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, HENRY, Archbishop of Dublin, WILLIAM of London, PETER of Winchester, JOCELIN of Bath and Glastonbury, HUGH of Lincoln, WALTER of Worcester, WILLIAM of Coventry, BENEDICT of Rochester, Bishops, and Master PANDULPH, Sub-Deacon and Familiar of our Lord the Pope, Brother AYMERIC, Master of the Temple in England, and the Noble Persons, WILLIAM MARISCALL, Earl of Pembroke, WILLIAM, Earl of Salisbury, WILLIAM, Earl of Warren, WILLIAM, Earl of Arundel, ALAN DE GALLOWAY, Constable of Scotland, WARIN FITZ GERALD, PETER FITZ HERBERT, and HUBERT DE BURGH, Seneschal of Poitou, HUGH DE NEVILLE, MATTHEW FITZ HERBERT, THOMAS BASSET, ALAN BASSET, PHILIP ALBINEY, ROBERT DE ROPPELL, JOHN MARSHALL, JOHN FITZ HUGH, and others our liegemen, have, in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs for ever :

1. That the Church of England shall be free, and enjoy her right entire, and her liberties inviolable ; and we will have them so observed, that it may appear from hence that the freedom of elections, which was reckoned chief and indispensable to the English Church, and which we granted and confirmed by our Charter, and obtained the confirmation of, from Pope Innocent III., before the discord between us and our barons, was granted of mere free will, which Charter we shall observe, and we do will it to be faithfully observed by our heirs for ever. 2. We also have granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs for ever : If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief, he shall have

his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees. 3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine. 4. The keeper of the land of such an heir being under age, shall not take of the land of the heir but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them: and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid. 5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear. 6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted, those who are near in blood to the heir shall have notice. 7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned. 8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she hold of us; or without the consent of the lord of whom she holds, if she hold of another.* 9. Neither we nor our bailiffs shall seize any land or rent for any debt so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties. 10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt falls into our hands, we will only take the chattel mentioned in the deed. 11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving however the service due to the lords; and in like manner shall it be done touching debts due to others than the Jews. 12. *No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid a reasonable aid. In like manner it shall be concerning the aids of the City of London.* 13. *And the City of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore we will and grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.* 14. *And for holding the general council of the kingdom concerning the assessment of aids, except in the*

* By the old law, grounded on the feudal exactions, a woman could not be endowed without a fine paid to the lord, neither could she marry again without his licence, lest she should contract herself, and so convey part of the feud to the lord's enemy. This licence the lords took care to be well paid for, and, as it seems, would sometimes force the dowager to a second marriage in order to gain the fine.—2 *Bl. Com.* 135.

three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business of the day shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not. 15. We will not for the future grant to any one, that he may take aid of his own free tenants; unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid. 16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence. 17. Common pleas shall not follow our court, but shall be holden in some place certain.* 18. Assizes of novel disseisin, and of mort d'ancestor, and of darrein presentment, shall not be taken but in their proper counties, and after this manner: We, or if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who, with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed. 19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business. 20. A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it, saving to him his contenement; and after the same manner a merchant, saving to him his merchandise. And a villein† shall be amerced after the same manner, saving to him his wainage,

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* By the ancient Saxon constitution there was only one superior court of justice in the kingdom, and that court had cognizance both of civil and spiritual causes, viz., the *wittenagemote* or general council, which assembled annually, or oftener, wherever the king kept his Christmas, Easter, or Whitsuntide, as well to do private justice as to consult upon public business. At the conquest the ecclesiastical jurisdiction was diverted into another channel, and the conqueror established a constant court in his own hall, thence called by Bracton and other ancient authors *aula regia* or *aula regis*. This court was composed of the king's great officers of state resident in his palace, and usually attendant on his person; such as the lord high constable and lord mareschal, who chiefly presided in matters of honour and of arms, determining according to the law military and the law of nations. Besides these, there were the lord high steward and lord great chamberlain, the steward of the household, the lord chancellor, whose peculiar business it was to keep the king's seal, and examine all such writs, grants and letters as were to pass under that authority, and the lord high treasurer, who was the principal adviser in all matters relating to the revenue. These high officers were assisted by certain persons learned in the laws, who were called the king's justiciars or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice, in matters of great moment and difficulty; all these in their several departments transacted all secular business both criminal and civil, and likewise the matters of the revenue; and over all presided one special magistrate, called the chief justiciar, or *capitalis justiciarius totius Angliæ*, who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence; and this officer it was who principally determined all the vast variety of causes that arose in this extensive jurisdiction; and from the plenitude of his power grew at length both obnoxious to the people and dangerous to the government which employed him.

This great universal court being bound to follow the king's household in all his progresses and expeditions, the trial of common causes therein was found very burthensome to the subject; wherefore King John, who dreaded also the power of the justiciar, very readily consented to that article which now forms the above chapter of Magna Charta.—3 *Bl. Com.* 38.

† Under the Anglo-Norman kings the bulk of the peasantry was in a state of villeinage or serfdom. The villein was absolutely dependent on the will of his lord,

if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighbourhood. 21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offence. 22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice. 23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it. 24. *No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.* 25. All counties, hundreds, wapentakes, and tythings shall stand at the old rents, without any increase; except in our demesne manors. 26. If any one holding of us a lay-fee die, and the sheriff, or our bailiffs, show our letters patent of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and inroll the chattels of the dead, found upon his lay-fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfil the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares. 27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the Church; saving to every one his debts which the deceased owed to him. 28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good-will of the seller. 29. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by another able man, in case he cannot do it through any reasonable cause. And if we lead him, or send him in an army, he shall be free from such guard for the time he shall be in the army by our command. 30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, but by the good-will of the said freeman. 31. Neither shall we nor our bailiffs take any man's timber for our castles, or other uses; unless by the consent of the owner of the timber. 32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee. 33. All wears for the time to come, shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast. 34. The writ which is called *præcipe*, for the future, shall not be made out to any one of any tenement, whereby a freeman may lose his court. 35. There shall be one measure of wine and one of ale, through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjects, that is to say, two ells within the lists; and it shall be of weights, as it is of measures. 36. Nothing from henceforth shall be given or taken, for a writ of inquisition of life or limb, but it shall be granted freely, and not denied. 37. If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage; neither will we have the custody of such fee-farm, socage, or burgage, except knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty that holds of us, by the

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and whatever he possessed was the property of his lord, who might seize it at his pleasure. The lord was indictable in the king's courts for any atrocious personal injury inflicted by him upon his villein, which was the sole protection which the laws gave to the latter against his owner.

Villeinage was, however, not absolute slavery. It was only to his lord that the villein was in this humble relation. Towards all others he was free, and had the rights of a freeman; consequently, by flight into other parts of the country many villeins escaped from their state of bondage; and though the lord had a legal right to reclaim them, his pursuit must often have been ineffectual. The indulgence also of many lords granted their villeins many indulgencies, which gradually ripened from customary privileges into legal rights. Many lords emancipated their villeins; and by these and other modes the peasantry gradually emerged from the condition of serfs to that of free labourers.

service of to pay a knife, arrow, or the like. 38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it. 39. *No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor condemn him, unless by the lawful judgment of his peers, or by the law of the land.* 40. *We will sell to no man, we will not deny to any man, either justice or right.* 41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any evil tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us, or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions. 42. It shall be lawful, for the time to come, for any one to go out of our kingdom, and return safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned. 43. If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us, than he would to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it. 44. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are pledges for any that are attached for something concerning the forest. 45. *We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.* 46. All barons who have founded abbeys, and have the kings of England's charters of advowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have. 47. All forests that have been made forests in our time, shall forthwith be disforested; and the same shall be done with the banks that have been fenced in by us in our time. 48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished, so as never to be restored: so as we are first acquainted therewith, or our justiciary, if we should not be in England. 49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service. 50. We will entirely remove from our bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwick in England: we will also remove Engelard de Cygony, Andrew Peter, and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue. 51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendiaries, who are come with horses and arms to the prejudice of our people. 52. If any one has been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order, before we undertook the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein. 53. The same respite we shall have (and in the same manner about administering justice, dis-afforesting the forests, or letting them continue) for disafforesting the forests, which Henry our father, and our brother Richard have afforested; and for the keeping of the lands

which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage, or if we tarry at home, and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf. 54. No man shall be taken or imprisoned upon the appeal * of a woman, for the death of any other than her husband. 55. All unjust and illegal fines made with us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely forgiven, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter. 56. If we have disseised or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the marche according to the law of the marche; the same shall the Welsh do to us and our subjects. 57. As for all those things of which a Welshman hath, without the legal judgment of his peers, been disseised or deprived

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* An *appeal*, in the sense wherein it is here used, does not signify any complaint to a superior court of an injustice done by an inferior one, which is the general use of the word; but it here means an *original* suit at the time of its first commencement. An appeal, therefore, when spoken of as a criminal prosecution, denotes an accusation by a private subject against another for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public.

This private process for the punishment of public crimes had probably its origin in those times when a private pecuniary satisfaction, called a *weregild*, was constantly paid to the party injured, or his relative, to expiate enormous offences. As therefore during the continuance of this custom, a process was certainly given for recovering the weregild by the party to whom it was due; it seems that when these offences by degrees grew no longer redeemable, the private process was still continued, in order to insure the infliction of punishment upon the offender, though the party injured was allowed no pecuniary compensation for the offence.—4 *Bl. Com.* 312.

An appeal of *felony* might have been brought for crimes committed either against the parties themselves or their relations. The crimes against the parties themselves were larceny, rape, and arson, and for these, as well as for mayhem, the person robbed, ravished, maimed, or whose houses were burnt, might have instituted this private process. The only crime against one's relation for which an appeal could be brought was that of *killing* him by either murder or manslaughter. But this could not be brought by every relation, but only by the wife for the death of her husband, or by the heir male for the death of his ancestor, which heirship was also confirmed by an ordinance of King Henry the First to the four nearest degrees of blood. It was given to the wife on account of the loss of her husband; therefore, if she married again before or pending her appeal, it was lost and gone; or if she married after judgment, she could not demand execution. The heir must also have been heir male, and such a one as was the next heir by the course of the common law at the time of the killing of the ancestor. But this rule had three exceptions; first, if the person killed left an innocent wife, she only, and not the heir, could have the appeal; secondly, if there were no wife, and the heir were accused of the murder, the person who next to him would have been heir male should have brought the appeal; thirdly, if the wife killed her husband, the heir might appeal her of the death.—See further 4 *Bl. Com.* 315.

of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade: but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned. 58. We will without delay dismiss the son of Llewellin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace. 59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the Charters which we have from his father, William, late King of Scots, it ought to be otherwise; and this shall be left to the determination of his peers in our court. 60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned, towards their dependents. 61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present Charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay: and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, (if we should be out of the realm,) the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us all the ways possible, by seizing our castles, lands, possessions, and in other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the person of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises; and he will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to them, and never shall hinder any person from taking the same oath. 62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons die, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot, come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear, that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not, by ourselves, or by any other, procure any thing whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissension between us, we do

fully remit and forgive: moreover all trespasses occasioned by the said dissension, from Easter in the 15th year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph, for the security and concessions aforesaid. 63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, for ever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed *bonâ fide* and without evil subtilty. Given under our hand, in the presence of the witnesses above-named, and many others, in the meadow called Runingmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

John died soon after the grant of the Great Charter, leaving England torn by civil war and foreign invasion, both of which had been caused by his perfidy and tyranny. The first act of the great Earl of Pembroke, as Protector of the Kingdom on the accession of Henry III., was to renew the Great Charter, but with several changes, the most important of which was the omission of the provisions concerning the manner and reason of levying scutages. It assigned as a reason for the omission of this and other weighty matters, that the prelates and barons had agreed to respite the consideration of them till further deliberation could be had, when they and such other things *as pertained to the welfare of all* should be most fully reviewed and set right. The stipulations in John's Charter, which were of a temporary nature, and referred to the troops and allies of that king and his barons respectively, were of course not copied into Henry's Charters. And the provisions for empowering the twenty-five chosen barons to redress violations of the Charter, were not renewed. A duplicate of the Charter was forthwith transmitted to Ireland, for the benefit of the king's subjects there; and writs were sent to the sheriffs of the several English counties, commanding them to cause the Charter of Liberties to be publicly read in full County Court, and to see that its ordinances were fully observed within their several jurisdictions. In the next year, after the French Dauphin had been driven out of the kingdom, and the malcontent English who had fought under him had returned to their allegiance, the Charter of Liberties was granted again, and was again renewed by Henry in the ninth year of his reign, at which same time the Charter of the Forest was granted, whereby many of the most atrocious iniquities of the primitive game-laws were redressed. The two Charters were five times renewed between this period and Henry's death. At some of these renewals temporary variations were introduced; but it is in the form in which it was promulgated in the ninth year of Henry's reign that the Great Charter was solemnly confirmed by his successor, and in that form it appears at the head of our statute book, where (as before mentioned) it is printed from the *inspeximus* and confirmation of it by Edward I.

Magna Charta,

THE GREAT CHARTER,

(TRANSLATED AS IN THE STATUTES AT LARGE,)

MADE IN THE NINTH YEAR OF KING HENRY THE THIRD, AND CONFIRMED BY KING EDWARD THE FIRST, IN THE FIVE-AND-TWENTIETH YEAR OF HIS REIGN.

EDWARD, by the grace of God King of England, Lord of Ireland, and Duke of Guyan: to all archbishops, bishops, &c. We have seen the Great Charter of the Lord Henry, sometimes King of England, our Father, of the Liberties of England, in these words:

"HENRY, by the grace of God King of England, Lord of Ireland, "Duke of Normandy and Guyan, and Earl of Anjou: To all arch- "bishops, bishops, abbots, priors, earls, barons, sheriffs, provosts, and "officers, and to all bailiffs and other our faithful subjects, which "shall see this present Charter, greeting: Know ye that We, unto the "honour of Almighty God, and for the salvation of the souls of our "progenitors and successors, kings of England, to the advancement of "Holy Church and amendment of our realm, of our mere and free will "have given and granted to all archbishops, bishops, abbots, priors, "earls, barons, and to all freemen of this our realm, these liberties "following, to be kept in our kingdom of England for ever."

CHAPTER I.

A Confirmation of Liberties.

"FIRST, we have granted to God, and by this our present Charter have con- "firmed for us and our heirs for ever, that the Church of England shall be free, "and shall have all her whole rights and liberties inviolable. We have granted "also, and given to all the freemen of our realm, for us and our heirs for ever, "these liberties under written, to have and to hold to them and their heirs, of us "and our heirs for ever."

CHAPTER II.

The Relief of the King's Tenant of full Age.

[Same as 2nd Chapter of John's Charter.]

CHAPTER III.

The Wardship of the Heir within Age. The Heir a Knight.

[Similar to 3rd Chapter of John's Charter.]

CHAPTER IV.

No waste shall be made by a Guardian in waste lands.

[Same as 4th Chapter of John's Charter.]

CHAPTER V.

Guardians shall maintain the Inheritance of Wards. Of Bishoprics, &c.

[Similar to 5th Chapter of John's Charter, with addition of like provisions against the waste of ecclesiastical possessions while in the king's hand during a vacancy in the see, &c.]

CHAPTER VI.

Heirs shall be Married without Disparagement.

[Similar to 6th Chapter of John's Charter.]

CHAPTER VII.

A Widow shall have her Marriage, Inheritance, and Quarantine. The King's Widow, &c.

[Similar (with additions) to the 7th and 8th Chapters of John's Charter.]

CHAPTER VIII.

How Sureties shall be charged to the King.

[Same as 9th Chapter of John's Charter.]

CHAPTER IX.

The Liberties of London and other Cities and Towns confirmed.

[Same as 13th Chapter of John's Charter.]

CHAPTER X.

None shall distrain for more Service than is due.

[Same as 16th Chapter of John's Charter.]

CHAPTER XI.

Common Pleas shall not follow the King's Court.

[Same as 17th Chapter of John's Charter.]

CHAPTERS XII. & XIII.

When and before whom Assizes shall be taken. Adjournment for Difficulty. Assizes of Darrein Presentment.

[Analogous to 18th and 19th Chapters of John's Charter.]

CHAPTER XIV.

How Men of all sorts shall be amerced, and by whom.

[Same as 20th and 21st Chapters of John's Charter.]

CHAPTERS XV. & XVI.

Making and defending of Bridges and Banks.

[Similar to 23rd Chapter of John's Charter.]

CHAPTER XVII.

Holding Pleas of the Crown.

[Same as 24th Chapter of John's Charter.]

CHAPTER XVIII.

The King's Debtor dying, the King shall be first paid.

[Same as 26th Chapter of John's Charter.]

CHAPTERS XIX, XX., & XXI.

Purveyors for a Castle. Doing of Castle-ward. Taking of Horses, Carts, and Woods.

[Same as 28th, 29th, 30th, and 31st Chapters of John's Charter.]

CHAPTER XXII.

How long Felons' Lands shall be holden by the King.

[Same as 32nd Chapter of John's Charter.]

CHAPTER XXIII.

In what places Weares shall be put down.

[Same as 33rd Chapter of John's Charter.]

CHAPTER XXIV.

In what case a Præcipe in Capite is grantable.

[Same as 14th Chapter of John's Charter.]

CHAPTER XXV.

There shall be but one Measure through the Realm.

[Same as 35th Chapter of John's Charter.]

CHAPTER XXVI.

Inquisition of Life and Member.

[Same as 38th Chapter of John's Charter.]

CHAPTER XXVII.

Tenure of the King in Socage, and of another by Knight's Service. Petit Serjeanty.

[Same as 37th Chapter of John's Charter.]

CHAPTER XXVIII.

Wager of Law shall not be without witness.

[Same as 38th Chapter of John's Charter.]

CHAPTER XXIX.

*None shall be condemned without Trial. Justice shall not be sold or deferred.**

"No freeman shall be taken, or imprisoned, or be disseised of his freehold, "or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; "nor will we pass upon him, nor *condemn* him, but by lawfull judgement of his peers, "or by the law of the land. We will sell to no man, we will not deny or *defer* to "any man either justice or right."

CHAPTER XXX.

Merchant Strangers coming into this Realm shall be well used.

[Same as 41st Chapter of John's Charter.]

CHAPTER XXXI.

Tenure of a Barony coming into the King's hands by Escheat.

[Same as 43rd Chapter of John's Charter.]

CHAPTER XXXII.

Lands shall not be Alienedto the Prejudice of the Lord's Service, [*i. e. Lord of the Fee.*]

CHAPTER XXXIII.

Patrons of Abbeys shall have the custody of them in time of Vacation.

[Same as 46th Chapter of John's Charter.]

CHAPTER XXXIV.

In what cases only a Woman shall have an Appeal of Death.

[Same as 51st Chapter of John's Charter.]

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* See 39th and 40th Chapters of John's Charter.

CHAPTER XXXV.

At what time shall be kept a County Court, a Sheriff's Term, and a Leet.

CHAPTER XXXVI.

No Land shall be given in Mortmain.

"It shall not be lawful from henceforth to any to give his lands to any religious "house, and to take the same land again to hold of the same house. Nor shall it be "lawful to any house of religion to take the lands of any, and to lease the same to "him of whom he received it: if any from henceforth give his lands to any religious "house, and thereupon be convict, the gift shall be utterly void, and the land shall "accrue to the lord of the fee."

CHAPTER XXXVII.

A Subsidy in respect of this Charter and the Charter of the Forest, granted to the King.

"Escuage from henceforth shall be taken like as it was wont to be in the time of "King Henry our grandfather; reserving to all archbishops, bishops, abbots, priors, "templars, hospitalers, earls, barons, and all persons as well spiritual as temporal, "all their free liberties and free customs, which they have had in time passed. And "all these customs and liberties aforesaid, which we have granted to be holden within "this our realm, as much as appertaineth to us and our heirs, we shall observe. "And all men of this our realm, as well spiritual as temporal, (as much as in them "is) shall observe the same against all persons in like wise. And for this our gift "and grant of these liberties, and of other contained in our charter of liberties of "our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, free-"holders, and other our subjects, have given unto us the fifteenth part of all their "moveables. And we have granted unto them, for us and our heirs, that neither "we nor our heirs shall procure or do any thing, whereby the liberties in this "charter contained shall be infringed or broken. And if anything be procured by "any person contrary to the premises, it shall be had of no force nor effect. These "being witnesses, Lord B. Archbishop of Canterbury, E. Bishop of London, I. Bishop "of Bath, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of "Worcester, J. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops: "the Abbot of St. Edmonds, the Abbot of St. Albans, the Abbot of Bello, the Abbot "of St. Augustines in Canterbury, the Abbot of Evesham, the Abbot of Westminster, "the Abbot of Bourgh St. Peter, the Abbot of Reding, the Abbot of Abindon, the "Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of "Certesy, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotebir, the "Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester: H. de Burgh, "Justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, "G. de Clare Earl of Gloucester and Hereford, W. de Ferrars Earl of Derby, W. "de Mandeville Earl of Essex, H. de Bygod Earl of Norfolk, W. Earl of Albemarle, "H. Earl of Hereford, J. Constable of Chester, R. de Ros, R. Fitzwalter, R. de "Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, J. "Gresly, F. de Breus, J. de Monemue, J. Fitzallen, H. de Mortimer, W. de Beau-"champ, W. de St. John, P. de Mauly, Brian de Lisle, Thomas de Multon, R. de "Argenteyn, G. de Nevil, W. Mauduit, J. de Balun, and others."

We, ratifying and approving these gifts and grants aforesaid, confirm and make strong all the same for us and our heirs perpetually; and by the tenor of these presents do renew the same, willing and granting for us and our heirs, that this Charter, and all and singular its articles for ever shall be stedfastly, firmly, and inviolably observed. Although some articles in the same Charter contained yet hitherto peradventure have not been kept, we will and, by authority royal, command from henceforth firmly they be observed. In witness whereof we have caused

these our letters patent to be made. T. Edward, our Son, at Westminster, the twelfth day of October, in the twenty-fifth year of our reign.

Magna Charta, in this form, has been solemnly confirmed by our kings and parliaments upwards of thirty times; but in the twenty-fifth year of Edward I. much more than a simple confirmation of it was obtained for England. As has been already mentioned, the original Charter of John forbad the levying of *escuage* save by consent of the Great Council of the land; and although those important provisions were not repeated in Henry's Charter, it is certain that they were respected. Henry's barons frequently refused him the subsidies which his prodigality was always demanding. Neither he nor any of his ministers seems ever to have claimed for the crown the prerogative of taxing the landholders at discretion: but the sovereign's right of levying money from his towns and cities under the name of tallages or prises, was constantly exercised during Henry III.'s reign and during the earlier portion of his son's. But, by the statute of Edward I. intituled *Confirmatio Chartarum*, all private property was secured from royal spoliation and placed under the safeguard of the great council of *all* the realm. The material portions of that statute are as follows;—

CONFIRMATIO CHARTARUM.

ANNO VICESIMO QUINTO EDV. I.

CAP. V.

And for so much as divers people of our realm are in fear that the aids and tasks which they have given to us beforetime, towards our wars and other business, of their own grant and good will (howsoever they were made), might turn to a bondage to them and their heirs because they might be at another time found in the rolls, and likewise for the prises taken throughout the realm, in our name, by our ministers; we have granted for us and our heirs that we shall not draw such aids, tasks, nor prises, into a custom for anything that hath been done heretofore, be it by roll or any other precedent that may be founden.

CAP. VI.

Moreover, we have granted for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all the commonalty of the land, that for no business from thenceforth we *shall take such manner of aids, tasks, nor prises, but by the common assent of all* the realm, and for the common* profit thereof, saving the ancient aids and prises due and accustomed.

Let us now pause and consider how far the great constitutional principles above enumerated, are recognised or established in these Charters.

In the first place, they clearly recognise the authority of an Hereditary Sovereign. The repeated expressions in them of the King granting for himself and his heirs, are themselves sufficient to prove this. Indeed, not only in England, but throughout Europe, during the middle ages, the existence of a "permanent Suzerain, vested with large rights

* "Par commun assent de *tut* le roiaume." The version in our statute book omits the important word "All."

"of a mixed personal and proprietary character over his vassals, though "subject also to certain obligations towards them," was always presumed as indispensably necessary for the existence of political society.* "The "rights of the chief were always conceived as constituting a *Status* "apart, and neither conferred originally by the grant, nor revocable at "the pleasure of those over whom they were exercised. This view of "the essential nature of political authority was a point in which all the "three great elements of modern European society—the Teutonic, the "Roman,† and the Christian, all concurred, though each in a different "way and with different modifications." Thus in England we find the nation constantly striving to regulate and temper, by solemn compact and laws, the power of its Royal chief, but never attempting, in early times, to dispense with the existence of a Royal chief. Even when the oppressiveness and proved perfidy of individual monarchs induced the nation to take away practical power from them, and to choose an executive board, who should rule in their name, such provisions, however necessary, were always considered and designed to be of a temporary nature. Nor even when kings were solemnly deposed, as in the cases of the second Edward and the second Richard, was kingship ever assailed. A new Sovereign was instantly placed in the room of the deposed one, in order that the nation might not be deprived for a moment of the monarchical head, that was reckoned politically indispensable.

The peaceable and undisputed accession of Edward I., though he was far distant from England at the time of the death of Henry III., established not only that the crown was hereditary in the royal family, but also that it was hereditary according to the principles of descent which regulate a private inheritance.‡

From what has been above stated, it also appears clearly that it is a *limited* Sovereignty which our constitution thus recognises. Although the government of our Anglo-Norman kings was, in fact, extremely arbitrary, they never were supposed either by others, or by themselves, to be absolute, irresponsible lords of the lives and properties of their subjects, like the despots of the Eastern World. But, though by common understanding the king was bound to consult his Great Council before he made new laws or exacted fresh taxes, and though the very essence of feudalism involved a reciprocity of duties between lord and vassal, the checks on royal caprice and royal oppression were always vague, and frequently ineffectual before the epoch of the Great Charter. From that time forward the limitations of the royal prerogative were unmis-

* See Grote's History of Greece, vol. iii., pp. 13, *et seq.*; the reflections on the discontinuance of Kingship in Hellas, compared with its preservation in Mediæval Europe, deserve an attentive perusal.

† *I. E.*, the *Imperial* Roman. The influence of Republican Rome, when her history and literature were familiarised to Europe by the revival of classical studies, was anything but Monarchical.

‡ The form of popular consent expressed at the Coronation was long considered necessary to complete the royal title. The heir to the throne had an inchoate right immediately on his predecessor's death, but his reign dated from his coronation. Such was the case till Edward I.'s reign, which dated from the day (four days after Henry III.'s death,) when the barons swore fealty to him in his absence, and his peace was proclaimed.—See *Hallam's Notes to his Middle Ages*, p. 301.

takeable and undeniable, and "Sub lege Rex" became a sure constitutional maxim, though forensic sycophants in after ages were sometimes found who whispered its converse.

Next, let us trace the great principle of the sovereign of England being bound to summon and consult a parliament of hereditary peers, and of elected representatives of the Commons.

Among all the nations of the Gothic stock, whether of its Scandinavian or of its Teutonic branch, and in all the kingdoms founded by them out of conquered Roman provinces, councils or assemblies of some form existed, whose consent the ruling chief was bound to obtain, in order to legalise all important measures of State. Thus the Anglo-Saxons had their Witanegemotes, with whose sanction new laws were made, and new taxes imposed. The Prelates and the Thanes attended these assemblies; and the inferior class, the Ceorls, though not directly represented there, yet were not without protectors and advocates; inasmuch as certain of the magistrates whom the men of every borough and township regularly elected from among themselves for the purpose of local self-government, were present at the Witan for the purpose of obtaining redress for any wrong which might have been committed, and for the redress of which the ordinary tribunals were inadequate. When once present at the Witan, though ostensibly only for the purpose of remedial justice, the Ceorl magistrates must have had some influence in other matters also: inasmuch as the cheerful co-operation of the bulk of the community in carrying any particular measure into effect, never can be thought immaterial even by those who have the power of enforcing sullen obedience. The Anglo-Saxon polity was swept away by the conquering Normans; but the recollection of this virtual though indirect system of representation, must have survived among the bulk of the population; and may have greatly facilitated the adoption and insured the good working of the subsequent parliamentary representation of the Commons.

Of the polity of the Normans, prior to their coming to this country, it is unhappily impossible to gain any minute knowledge, for the "Records of Normandy have perished: they were destroyed, it is said by Richelieu; and the archives of Rouen afford no information whatever which can elucidate the ancient constitution of the Duchy, anterior to the fourteenth century."* Thus much is, however, certain, that there was a council of the Norman barons which the Dukes were obliged on all important occasions to summon and consult. It was not likely that they by whose help William won the crown of this country, and to whom he parcelled out its lands as rewards, would consent to forego in their new abodes the political rights which they had enjoyed in their old homes across the Channel. The Anglo-Norman king summoned and consulted his great council, as he had done while merely a Norman duke. All who held land by military tenure immediately of the Crown, had a right to attend, and were expected to attend the king's court on the solemn days of council, and all these were originally styled the King's Barons. Besides these, the prelates, and the heads of

* Palgrave, vol. i., p. 126.

the chief abbeys and priories formed here, as in every country of Christendom, an essential part of the Great Council. No other persons of any class whatever had the right to appear there either in person, or by any sort of representative.

Many among the large number of the tenants-in-chief, by reason of their comparative poverty, the distance of their estates from the cities where the Council was usually convened, and other causes, soon ceased to attend or to be expected to attend as regularly as the more powerful and wealthy nobles. These last were soon termed the Greater Barons, and ultimately, the titles of "Peer" and "Baron," which had first been common to all the King's immediate tenants, were, in speaking of the kingdom generally, exclusively applied to the heads of a few great houses, who, largely endowed with lands, and constant members of the Great Council, were clearly distinguishable in rank and in circumstances from the mass of the inferior tenants-in-chief. Traces of the distinction appear earlier than John's reign, but in that king's Great Charter the line is drawn decisively and broadly between these two bodies, which we may safely call, in modern phraseology, the Nobility and the Gentry of the Realm. By the 14th chapter of John's Charter, the king binds himself in order to constitute the General Council for the grant of pecuniary aids, that it shall be summoned thus—"We shall cause the Archbishops, Bishops, Abbots, Earls and greater Barons to be separately summoned by our letters. And we shall cause our sheriffs and bailiffs to summon generally all others who hold of us in chief."

In the earlier part of this clause we see, indisputably, the original of the upper house of our modern Parliament. And as it was thus originally composed of powerful landowners, the English Peerage naturally became an Hereditary Peerage, without any express enactment to that effect. For, the power of devising real estates did not exist for many ages after the grant of the Great Charter, and although alienation with the consent of the lord and upon paying him a fine, was permitted by law, the entire transfer of large estates by such means could seldom or never have occurred, for the simple and obvious reason, that there were no wealthy capitalists to come forward and buy the whole lands of a mighty but impoverished baron at a single bargain. As therefore the estates of the great barons descended generally from heir to heir, and as each heir on coming into possession had the same right as his predecessor to be treated as a great baron of the realm, the idea of hereditary descent became gradually associated with the *status* of a peer. And this theory of nobility by blood at last prevailed so far, that when our kings began to summon by writ to meet and consult among the barons, many who had no baronial possessions, these also were ultimately, though not without much discrepancy of opinion and irregularity of practice, held to have received an hereditary peerage. And the same attribute of hereditary transmissibility applied also to peerage created by patent. How far the latter part of the clause shows the germ of our House of Commons, requires more consideration. It depends, mainly, on the opinion we form respecting the antiquity of the system of the mass of these inferior land-holders in each county electing some of their number to represent

them in the Great Council. Even before the reign of John, elections of knights of the shire, for purposes connected with the administration of government, can be clearly traced in our records. And during his reign, and in the earlier part of that of Henry III., there are repeated instances of such representation for the purpose of presenting grievances, and of assessing on each individual his fair proportion of a voted subsidy. It seems, therefore, natural and reasonable to suppose that the Great Charter, in ordering the inferior tenants in chief to be summoned generally by the sheriffs, (the presiding officers of the county courts at which the other analogous elections took place,) contemplated the delegation of some individuals of that body to the Great Council to sit in the name of the rest. We find thus the germ of county representation. And although these important provisions were omitted in Henry's Charters, it was under the pretext of reserving the details for maturer deliberation, and the existence of the principle which they embody was clearly taken for granted. In 1245 we find Henry, in the very terms of the Great Charter of John, summoning the great barons singly, and the other tenants in chief generally, by writs to the sheriffs of each county. To a Great Council summoned in 1246, the title of Parliament is for the first time given by the old chronicler, which had previously been applied to any kind of conference, but thenceforth in England became restricted to the Great Council of the nation. In 1254 Henry directs a Parliament to be convened at London, to which the sheriff of each county is to cause to be elected in the county court two good and discreet knights of the shire, whom the men of the shire shall have chosen for this purpose, in the stead of all and each of them, to consider along with the knights of other counties what aid they will grant the king.

Finally, in 1265 in the celebrated Parliament summoned by De Montfort in Henry's name, at which the representation of the boroughs was created, that of the counties was undoubtedly placed or confirmed on its permanent basis, as the writs are still extant by which each sheriff is directed to return two lawful, good, and discreet knights for his shire.

The date cannot be exactly given of the important feature in county representation, of all the freeholders of the county voting in the election of knights of the shire, and not merely those who held their land directly of the Crown by military tenure. It is obvious that this extension of the franchise arose from the circumstance of the knights being elected at the county courts, at which all the freeholders of the shire did suit and service. And although opinions vary as to the precise time and mode in which it was effected, it is clear that at a very early period, certainly in the first half of Henry the Third's reign, the county members of England were elected by all the freeholders, without regard to their holding by military or by socage tenure, and without reference to their being or not being immediate tenants of the Crown. Subsequently, a statute of Henry VI. limited the county franchise to such freeholders only as possessed free tenements of the clear annual value of forty shillings.

For the commencement of the other branch of our House of Commons, we must take a date subsequent to the Great Charter of

John. They who obtained that Charter, had designed to give the citizens and burghers of England the same protection from royal rapacity which they exacted for the land-holders. This is evident from the "Articuli Magnæ Cartæ,"* the rough draft of the barons' stipulations laid before King John at Runnymede, and to which he assented under seal. In the 32nd of these articles, after the provision against the levy of scutages or aids, save by consent of the general council of the realm, were added the important words, "And in like manner be it "done respecting the tallages and aids of and from the city of London "and other cities." Through some unexplained neglect or manœuvre, these important words were omitted when the Charter was formally drawn up: and the cities and towns were left exposed to the exactions of their feudal oppressors, without any protection in the national council. Simon de Montfort was the first statesman who perceived and fully appreciated the growing importance of the commercial middle classes in England. The instances sometimes asserted of borough representation before his time, are both scanty and spurious; but to the Parliament summoned by him in Henry's name, after the battle of Lewes, 1264, two burgesses were returned for every burgh in each county, the writs for which are still preserved. De Montfort soon perished in the vicissitude of civil war; but his reform measure perished not with him. The victorious royalists felt the policy of enfranchising the trading community of the land. Parliaments continued to be summoned on De Montfort's plan, and when at length the Confirmatio Chartarum, in the 25th year of Edward I., by the enactments which have above been quoted, made the consent of Parliament necessary to the levy of talliages, of subsidies, and, in effect, of all taxes, the presence of the burgesses in the Parliaments of England became thenceforward essential and indispensable.

The division of our Parliament into two Houses is foreshadowed in the distinction drawn by John's Charter between the Great Barons and the inferior tenants in chief. Providentially for England the representatives of these last, the knights of the shire, coalesced with the borough representatives; and though some time elapsed before any certain system was maintained, they became the joint representatives of the Commons of England, leaving the Great Barons to form together with the prelates a separate senate and a separate order. The benefits of this to England have been incalculable. She has had the advantage of a nobility, and has not been cursed with a noblesse. One of the proud deficiencies of our language is, that the term "Roturier" is untranslateable into English. As Hallam truly and eloquently remarks, "from "the reign of Henry III. at least, the legal equality of all ranks [of "freemen] below the peerage was to every essential purpose as com-"plete as at present. * * What is most particular, is that the "peerage itself confers no privilege, except on its actual possessor. "The sons of peers, as we well know, are commoners, and totally "destitute of any legal right beyond a barren pre-eminence. There is "no part of our constitution so admirable as this equality of civil

* See them at length in "Blackstone on the Charter," pp. 1, *et seq.*

" rights, this *isonomia*, which the philosophers of ancient Greece only " hoped to find in democratical government. From the beginning our " law has been no respecter of persons. It screens not the gentleman " of ancient lineage from the judgment of an ordinary jury, nor from " ignominious punishment. It confers not, it never did confer, those " unjust immunities from public burthens which the superior orders " arrogated to themselves upon the Continent. Thus while the privi- " leges of our peers, as hereditary legislators of a free people, are " incomparably more valuable and dignified in their nature, they are " far less invidious in their exercise than those of any other nobility in " Europe. It is, I am firmly persuaded, to this peculiarly democratical " character of the English monarchy that we are indebted for its long " permanence, its regular improvement, and its present vigour. It is " a singular, a providential circumstance that in an age when the " gradual march of civilisation and commerce was so little foreseen, our " ancestors, deviating from the usages of neighbouring countries, should, " as if deliberately, have guarded against that expansive force which in " bursting through obstacles improvidently opposed, has scattered " havoc over Europe."

The last great principles of our Constitution relate to the Administration of Justice. One maxim has been stated in the very words of the Great Charter: and the solemn declaration and covenant of the sovereign, as chief magistrate and supreme lord of all judicial proceedings, that justice shall not be sold or delayed, requires no comment. Though, our legal reformers would do well to consider how far the practice of making suitors pay for judicial writs, and exacting court-fees on trials is in accordance with the great constitutional canon; and though "*the law's delay*" continues as in Shakspeare's time to form one of the curses of humanity to an extent never contemplated at Runnymede. The security from arbitrary imprisonment, and the other great constitutional principle, that of Trial by Jury, claim our most earnest attention, both on account of their universal practical importance, and by reason of the tendency now shown in many quarters to disparage and discard that long-venerated system of trial.

The great words of the Great Charter—worth all the classics to Lord Chatham's mind—which have protected for six centuries, and still protect the personal liberty and property of all freemen, have been already quoted, but never can be too often repeated. "No " freeman shall be taken, or imprisoned, or be disseised of his freehold, " or liberties, or free customs, or be outlawed or exiled, or any other- " wise destroyed; nor will we pass upon him, nor condemn him, but " by lawful judgment of his peers, or by the law of the land. We will " sell to no man, we will not deny or defer to any man justice or " right."

"It is obvious," says Hallam, "that these words, interpreted by " anyhonest court of law, convey an ample security for the two main " rights of civil society. From the æra, therefore, of King John's " Charter it must have been a clear principle in our constitution that " no man can be detained in prison without trial. Whether courts of " justice framed the writ of Habeas Corpus in conformity to the spirit

"of this clause, or found it already in their register, it became from "that æra the right of every subject to demand it. That writ, ren- "dered more actively remedial by the statute of Charles II., but "founded upon the broad basis of Magna Charta, is the principal "bulwark of English liberty; and if ever temporary circumstances or "the doubtful plea of political necessity shall lead men to look on its "denial with apathy, the most distinguishing characteristic of our "constitution will be effaced."

With respect to Trial by Jury, the words of the Charter, "by the lawful judgment of his peers," (*per legale judicium parium suorum,*) have generally been understood to refer to it, and to establish this mode of trial as the constitutional birthright of every Englishman when prosecuted in the name of the sovereign on any charge of a criminal nature. Some writers, however, of eminent learning, have treated this supposition as a mere vulgar error; and deny that the *judicium parium* has any reference whatever to trial by Jury. The subject well deserves investigation; and it certainly involves not a mere point of legal archæology or of forensic practice, but a constitutional question of the most solemn order. Were any authority wanting to justify the treating this great judicial question as a constitutional one, I would refer to the greatest of all philosophical and political writers, to

Il maestro di color che sanno,

who tells us that every Constitution is divisible into three branches: —1st, the Deliberative, 2ndly, the Executive, and 3rdly, the Judicial.*

Trial by Jury, in the literal sense in which we usually understand it, that is to say, trial by twelve men sworn to return a verdict determining the guilt or innocence of the accused party, was certainly not generally introduced into England at the epoch of the Great Charter. It is to be hoped that few educated men at the present day, except cartoon painters, believe in the silly story of its having been an invention of the great Alfred. The Anglo-Saxon system of criminal judicature had indeed the great principles of trying men publicly before a popular tribunal, and not permitting their fate to be dependent on the judgment or caprice of any officer of the crown. These principles are also essential attributes of Trial by Jury, and the introduction of that system was without doubt facilitated by its being thus congenial to the old feelings and customs of the mass of the population. But an Anglo-Saxon criminal trial took place, not before twelve sworn men, or any other definite number, but in presence of all the assembled members of the hundred or the county court, the latter being the tribunal before which most criminal charges were determined. All the landowners of the county, under the presidency of the sheriff and bishop, formed this court. They were its "Sectatores," or suitors. They all took part, or had a right to take part, in a criminal trial, and they all *looked on* to see whether the stipulated proof of guilt or innocence was given. I say they *looked on*, for that term implies more accurately the functions of the county court suitors in a

* Τριὰ μοριὰ τῶν πολιτειῶν πάσων. ἓν μεν το βουλευόμενον περὶ τῶν κόινων. ἕτερόν δε τὸ περὶ τὰς ἀρχας. τριτόν δέ τι τό δίκαζον.—*Aristotle, Polit.* iv., 11, 1.

Saxon criminal trial, than any word which involves the idea of balancing testimony, or of arguing from apparent fact to inferential fact. This arose from the system of the Saxon jurisprudence making a trial, as Palgrave truly remarks,* "rather of the nature of an arithmetical "calculation, or a chemical experiment, than what we now understand "by the trial of a cause. A certain form was gone through, and "according to its result, which was always palpable and decisive one "way or the other, the accused person was found guilty or acquitted." This is in no degree an exaggerated account of the Anglo-Saxon system of trying offenders, either by the production of compurgators, or by the ordeal. In the first of these modes, the accused party was required to produce neighbours to swear to their belief in his innocence; and the effect of such neighbours' oaths was estimated not by the means of knowledge possessed by the deponents, or by their characters, or even by their number, but by their "worth" in the Anglo-Saxon scale of persons; according to which an eorl's oath was equal to the oaths of six ceorls, and so on. If the accused party produced the requisite amount of oath (which was in every case rigorously defined by a curiously minute penal tariff), he was set free. If the aggregate value of the oaths of his compurgators fell below the prescribed sum, he was pronounced guilty. If the accused person put himself upon the trial by ordeal, the weight of the hot iron which he was to bear, or the depth to which he was to plunge his arm into the hot water, was scrupulously preappointed by the law. The assembly looked on. In trial by compurgation, they added up the amount of the oaths; in trial by ordeal, they watched the effect of the hot iron or hot water upon the culprit's skin, and that was all which they had to do.† For such functions the tumultuary assembly of the county court was fit enough; but it would have been wholly inadequate, when compurgation and ordeal were abolished, to assume the high deliberative duties of inquiring into and comparing evidence, for which, happily, the Trial by Jury has proved so efficient.

For this great institution we are indebted, not so much to our Saxon as to our Norman ancestors; and this alone ought to make us regard the Norman conquest of this island as an ultimate blessing to its inhabitants. In Normandy (besides Trial by Battle, in which the accused and the accuser, or in some few cases their champions, settled their differences in mortal combat,) criminal charges were tried as follows:—An inquest of twenty-four "good and lawful men" was summoned from the neighbourhood where the murder or the theft had been committed. These were the "Jurati," or "Juratores," so called from the oath they took to speak the truth. The officer is directed by the Norman law to select "those who are believed to be best informed of the truth of the matter,

* See "Palgrave's History of the English Commonwealth."

† See Palgrave *ut supra*. It must not, however, be supposed that in cases of flagrant guilt the offender was allowed the chance of escaping through the perjury of compurgators or the jugglery which was frequent in the ordeal. On the contrary, the slayer who was found near the bleeding corse, or the thief who was taken on fresh pursuit in possession of the booty, *hond-habend* and *back-barend*, was strung up without ceremony to the nearest bough.

"and how it happened." None were to be adduced who were known friends or declared enemies of either party. Before the culprit was put upon his trial, a preliminary inquest was taken by four knights, who were questioned concerning their belief of his guilt; and in their presence the officer afterwards interrogated the twenty-four jurors, not in one body, but separately from each other. They were then assembled and confronted with the culprit, who could challenge any one for lawful cause, and if the challenge was allowed, the testimony of that juror was rejected. The presiding officer, or judge, then "recorded" the verdict of the jurors, in which twenty at least were required to concur.

We learn this from the "Grand Coustumier," a description of the law of Normandy, written nearly about the time of John, and a little before the separation of the Duchy from the English crown. The pretext, sometimes set up, that it represents Anglo-Saxon laws imported into Normandy, and not laws of Norman original, is utterly unfounded and absurd. Decisive proof indeed of the Continental origin of our Trial by Jury may be found in the Capitularies of the early Frankish kings, which we know Duke Rollo to have largely used in regulating the institutions of his new Duchy. Thus, the Capitularies direct, that for the decision of a criminal charge, Sworn Witnesses (*i. e.* Jurors) shall be summoned from the Visne; that they be twelve in number, not to be challenged without lawful cause, and to be kept without meat or drink till they give their verdict.

The introduction into England of this Jury trial, as well as of the trial by battle, was naturally favoured by the Norman Judges who presided over the Royal Courts after the Conquest: and the king's Itinerant Courts, in which there was no assemblage of local members, soon assumed the functions of trying many of the cases which had previously been tried at the County Courts. The Normans generally abolished trial by Compurgators, in criminal cases; and though the trial by Ordeal long continued in force, men at length began to regard it in its true light of an impious absurdity, and of a not unfrequent engine of fraud. Henry II., by the laws in which he instituted the trial by twelve sworn knights, in certain civil causes, where real property was the subject of dispute, familiarised men's minds more and more with the theory and practice of Jury trial; and the more it was known, the more it was valued. Repeated instances can be traced, in the reigns of his sons, of accused persons being tried by Juries on criminal charges, for which mode of trial they paid a sum of money to the king, evidently regarding it as a valuable privilege. At length, in the year 1215, the year before the signing of Magna Charta, the Council of Lateran prohibited the further continuance of trial by ordeal throughout Christendom, and the adoption of trial by Jury became unavoidably general in England, in order to dispose of the numerous class of cases where the charge was preferred, not by an injured individual against the culprit in the form of an Appeal, but by the Great Inquest of the County (our modern Grand Jury) in the form of a presentment. For, of course, it was only where there was an accusing appellant, that the trial by battle was possible. Still, there was for a long time no mode of compelling a prisoner to put himself on the country, *i. e.* to commit the

question of his guilt or innocence to twelve sworn men, summoned from the neighbourhood. Edward I.'s law, inflicting the "*Peine forte et dure*," on prisoners who refused to plead, was passed to obviate this difficulty; which was not, however, completely got rid of till the reign of George III.

Trial by Jury was originally, both in Normandy and here, an appeal to the knowledge of the country. The Jurors were selected so as to insure the attendance of those who knew most of the transaction. They gave a verdict from their own knowledge of the case, and not from hearing the testimony of others. Gradually, however, a change took place in this respect. At first, documentary evidence, such as deeds, charters, &c., throwing light on the matter in dispute, were permitted to be laid before the Jurors. The next improvement was to introduce the *vivâ voce* testimony of persons, other than the jurors, who could give any information as to the true circumstances of the case. By degrees this became the evidence, on which, and not on any private knowledge of their own, jurors were sworn, as at present, to give their verdict. This change was slowly worked out in civil or criminal proceedings; and the forms of our law at this moment bear abundant traces of the original function of a jury having been that of witnesses.*

To return to Magna Charta; some of those who deny the applicability of its 29th chapter to Trial by Jury, understand the expression in it respecting trial by one's peers, to refer to the old County Court criminal judicature, in which a freeman certainly was tried *before*, if

* These views and proofs respecting the Norman origin of Trial by Jury have been principally taken from Palgrave. See also Reeves's "History of the Law of England," vol. i., and Stephens' "New Commentaries on the Laws of England," vol. iii. p. 587, n.

I have not discussed here either the subject of Grand Juries, or of Trial by Jury in civil cases; respecting both of which ample information will be found in Palgrave and Reeves.

A most valuable volume by Mr. Hallam has just appeared, containing "Supplemental Notes" to his "History of the Middle Ages." It contains a long and learned note on the subject of trial by jury, in which Mr. Hallam fully ratifies Palgrave's views of the criminal jurisprudence of the Anglo-Saxons. Both these great writers insist strongly on the importance of the distinction between the original jurors, who themselves were witnesses, and the modern jurors who form their opinion on the evidence of others. It is singular that Mr. Hallam should say that Sir Francis Palgrave "has presented trial by jury in what may be called a *new* light," by pointing out how it was originally a mere examination of witnesses. That fact is one with which every practising lawyer must always have been familiar, through its being forced upon his notice by our law of Venue, and the classification of actions into local and transitory.

The authorities collected in Mr. Hallam's note show that the present mode of procedure before juries, by their hearing the witnesses and counsel of both parties in open court, is at least as old as the times of the Lancastrian kings. So that even those who consider that, until this essential change in the character of the jury from their original function of mere witnesses took place, our actual trial by jury cannot be said to have existed, must concede to it an antiquity of four centuries; while the germ of it, as we perceive, was clearly coeval with the germs of our other first national institutions.

Mr. Hallam's note concludes with an eulogium and a wish respecting our grand principle of trial of facts by the country, in which I earnestly concur. "From this "principle (except as to that preposterous relic of barbarism, the requirement of "unanimity) may we never swerve—may we never be compelled, or wish, to swerve— "by a contempt of their oaths in jurors, and a disregard of the just limits of their "trust."

not *by* his brother freemen. But a decisive answer to this hypothesis is found in the fact that Magna Charta had just taken away, by a preceding chapter, the right of the Sheriff to try pleas of the crown at all, and had thus put an end to the criminal judicature of the County Court altogether. It is therefore absurd to construe the 29th chapter as solemnly ordaining a mode of trial which the 26th chapter had just solemnly abolished. The other hypothesis is, that the Great Charter, in speaking of trial by peers, had in view solely the Great Barons, who, as members and peers of the great Court of the king, had a right to be tried there by their peers. Undoubtedly, this clause gives a peer of the land an indisputable right to a trial in the House of Lords, but I am led to reject the interpretation which would restrict the operation of the clause to the peerage only, by a consideration of the circumstances and documents connected with the passing of the Great Charter, and which are collected by Blackstone in the work so often referred to.

King John, about a month before the Congress at Runnymede, had made a fruitless attempt to detach the great barons from the formidable national rising against him, by offering to them and their immediate followers, the privileges which the 35th chapter of his Great Charter afterwards assured to every freeman of the realm. John's letters of proffered compromise are still in existence,* and in them he writes,—"Be it known that we have granted to our barons who are "against us, that we will neither take nor disseise them or their men, nor "will we pass upon them by force or by arms, except by the law of "our realm, *or by the Judgment of their Peers in our Court,*" &c.

The words "in our Court," here clearly limit the privilege of "Trial by Peers" to the barons, who alone were members of the King's Court, or could have their peers there to try them. Had these words been repeated in the analogous clause in the Great Charter, the interpretation which we are now considering, would have appeared irresistibly correct. But the phraseology of Magna Charta is widely different. Magna Charta says, "NULLUS LIBER HOMO "dissaisietur, &c., nisi per legale judicium parium suorum." It is evident that the Barons, when they rejected the insidious offer of John, and refused to make their reform a mere class intrigue, instead of a great national movement, took care so to alter the terms of this great stipulation as to make it embrace all the free community.† I

* See Blackstone.

† The recollection of this offer of John's and of the Barons' magnanimity in rejecting it, makes us feel, with redoubled force, the noble eulogium of Lord Chatham :—"It is to *your* ancestors, my lords,—it is to the English barons that we "are indebted for the laws and constitution we possess. Their virtues were rude "and uncultivated, but they were great and sincere. Their understandings were as "little polished as their manners, but they had hearts to distinguish right from "wrong ; they had heads to distinguish truth from falsehood ; they understood the "rights of humanity, and they had spirit to maintain them.

"My lords, I think that history has not done justice to their conduct, when "they obtained from their sovereign that great acknowledgment of national rights "contained in Magna Charta ; they did not confine it to themselves alone, but "delivered it as a common blessing to the whole people. They did not say, These

cannot but believe that the framers of Magna Charta *did* intend to give a solemn sanction to the Trial by Jury, which had been for years gradually becoming prevalent, which had just been rendered more generally necessary and desirable through the abolition of the Ordeal, and to the merits of which I cannot suppose those illustrious statesmen to have been blind. The expression, "Trial by Peers," as applied to Trial by Jury, though it may not have enough technical accuracy to satisfy a mere legal antiquary, is, and was, at the time, sufficiently appropriate to justify its being so understood; and so it certainly has been generally understood by England's jurists, judges, statesmen, and historians, for centuries.

The institution of Trial by Jury into this country, has not only given us the fairest system of trial ever known, but it has also for centuries been of incalculable national advantage as an instrument of national education. I gladly quote on this point the no less true than eloquent words of the great and good Dr. Arnold:—"The effect of any particular arrange-"ment of the judicial power, is seen directly in the greater or less "purity with which Justice is administered; but there is a farther "effect, and one of the highest importance, in its furnishing to a "greater or less portion of the nation one of the best means of moral "and intellectual culture, the opportunity, namely, of exercising the "functions of a judge. I mean that, to accustom a number of persons "to the intellectual exercise of attending to, and weighing and com-"paring evidence, and to the moral exercise of being placed in a high "and responsible situation, invested with one of God's own attributes—"that of Judgment; and having to determine with authority, between "truth and falsehood, right and wrong—is to furnish them with very "high means of moral and intellectual culture; in other words, it is "providing them with one of the highest kinds of education." *

The great constitutional enactments of Magna Charta have, from the very earliest times, been regarded in that light, and treated not as temporary regulations, but as the fundamental institutions of our government and laws. Their confirmation was repeatedly exacted from the reigning Sovereign by our Parliaments; not because the Great Charter was supposed to become invalid without such ratification, but in order to impress more solemnly on impatient princes and profligate statesmen their duty of respecting the great constitutional ordinances of the realm. The most awful rites of religion were called in aid by the English clergy (to whom, as Hallam remarks, we are much indebted for their zeal in behalf of liberty during the thirteenth century), to bind the slippery consciences of John's son, and grandson, and to awe them

"are the rights of the great barons, or these are the rights of the great prelates:—"No, my lords; they said, in the simple Latin of the times, *nullus liber homo*, and "provided as carefully for the meanest subject as for the greatest. These are "uncouth words, and sound but poorly in the ears of scholars; neither are they "addressed to the criticism of scholars, but the hearts of free men. These three "words, *nullus liber homo*, have a meaning which interests us all; they deserve to "be remembered—they deserve to be inculcated in our minds—they are worth all "the classics."

* "Arnold's Lectures on Modern History," Lect. I.

by the terrors of excommunication from breaking the great compact between the crown and the people. The most earnest efforts were also employed to make the Great Charter familiarly known throughout the land by all, as the common birthright of all, and the most stringent measures of law were devised to insure the prompt punishment of any who should dare to violate it. To quote an instance or two of this :— by the *Confirmatio Chartarum*, 25 Ed. I. (part of which has already been cited), it was ordained that

"The Charters of Liberties and of the Forest should be kept in every parish ; and "that they should be sent under the king's seal as well to the justices of the Forest "as to others, to all sheriffs and other officers, and to all the cities in the realm, "accompanied by a writ commanding them to publish the said Charters, and declare "to the people that the king had confirmed them in all points. All justices, sheriffs, "mayors, and other ministers were directed to allow them when pleaded before "them ; and any judgment contrary thereto was to be null and void. The Charters "were to be sent under the king's seal to all cathedral churches throughout the "realm, there to remain, and to be read to the people twice a-year. It was ordained "that all archbishops and bishops should pronounce sentence of excommunication "against those who, by word, deed, or counsel, did contrary to the aforesaid "Charters."

By the "*Articuli super Cartas*," a statute passed in the 28th Ed. I., the Charters are ordered to be read by the sheriffs four times a year, before the people of the shire in open County Court. And the statute further ordains, that for the punishing of offenders against the Charters,

"There shall be chosen, in every shire court, by the commonalty of the same "shire, three substantial men, knights, or other lawful, wise, and well disposed "persons, which should be justices sworn and assigned by the king's letters patent "under the great seal, to hear and determine without any other writ, but only their "commission, such plaints as shall be made upon all those that commit or offend "against any point contained in the aforesaid Charters, in the shires where they be "assigned, as well within franchises as without, and as well for the king's officers "out of their places as for others ; and to hear the plaints from day to day without "any delay, and to determine them, without allowing the delays which be allowed "by the common law. And the same knights shall have power to punish all such "as shall be attainted of any trespass done contrary to any point of the aforesaid "Charters where no remedy was before by the common law, as before is said, by "imprisonment, or by ransom, or by amerciament, according to the trespass."

A volume, precious to Englishmen for the merits both of its subject and of its authors, might easily be collected from the panegyrists of Magna Charta. I have already quoted Lord Chatham, and I will cite here the words of only one statesman more, whom I select on account of his eminence as an historian, and as a philosophical and political inquirer. His eloquent observations are also the more valuable for citation here, because they forcibly point out the existence in our constitution of that law of progress and development, the operation of which it is one of the principal objects of these pages to illustrate. Sir James Mackintosh says of Magna Charta—

"It was a peculiar advantage that the consequences of its principles "were, if we may so speak, only discovered gradually and slowly. It "gave out on each occasion only as much of the spirit of liberty and

"reformation as the circumstances of succeeding generations required, "and as their character would safely bear. For almost five centuries "it was appealed to as the decisive authority on behalf of the people, "though commonly so far only as the necessities of each case demanded. "Its effect in these contests was not altogether unlike the grand pro- "cess by which nature employs snows and frosts to cover her delicate "germs, and to hinder them from rising above the earth till the atmo- "sphere has acquired the mild and equal temperature which insures "them against blights. On the English nation, undoubtedly, the "Charter has contributed to bestow the union of establishment with "improvement. To all mankind it set the first example of the pro- "gress of a great people for centuries, in blending their tumultuary de- "mocracy and haughty nobility with a fluctuating and vaguely limited "monarchy, so as at length to form from these discordant materials the "only form of free government which experience had shown to be re- "concilable with widely extended dominions. Whoever in any future "age or yet unborn nation may admire the felicity of the expedient "which converted the power of taxation into the shield of liberty, by "which discretionary and secret imprisonment was rendered impracticable, and portions of the people were trained to exercise a larger "share of judicial power than ever was allotted to them in any other "civilised state, in such a manner as to secure, instead of endangering, "public tranquillity; whoever exults at the spectacle of enlightened "and independent assemblies, which, under the eye of a well informed "nation, discuss and determine the laws and policy likely to make com- "munities great and happy; whoever is capable of comprehending all "the effects of such institutions with all their possible improvements "upon the mind and genius of a people,—is sacredly bound to speak "with reverential gratitude of the authors of the GREAT CHARTER. "To have produced it, to have preserved it, to have matured it, con- "stitute the immortal claim of England upon the esteem of mankind. "Her BACONS and SHAKESPEARES, her MILTONS and NEWTONS, with "all the truth which they have revealed, and all the generous virtue "which they have inspired, are of inferior value when compared with "the subjection of men and their rulers to the principles of justice, if, "indeed, it be not more true that these mighty spirits could not have "been formed except under equal laws, nor roused to full activity with- "out the influence of that spirit which the GREAT CHARTER breathed "over their forefathers."

It has been shown in the preceding pages that the thirteenth century saw the commencement of our nationality, and that during it the great foundations of our constitution were laid. But it would be ignorant rashness to assert that the organisation of our institutions was complete even at the time of the death of Edward I. What was said of the Roman Constitution by two of its greatest statesmen, and written by another, may with equal truth be averred of the English,—that no one man and no one age sufficed for its full production.* But its kindly

* "Tum Lælius, nunc fit illud Catonis certius, nec temporis unius, nec hominis esse constitutionem reipublicæ."—*Cicero De Republicâ*, lib. ii. 21.

growth went rapidly on during the reigns of the later Plantagenets; and the historian of the last centuries of the middle ages, traces with pride and pleasure the increase and systemisation of the power of the House of Commons in asserting and maintaining the exclusive right of taxation; in making the grant of supplies dependent on the redress of grievances; in directing and checking the public expenditure; in establishing the necessity of the concurrence of both Houses of Parliament in all legislation; in securing the people against illegal ordinances and interpolations of the statutes; in inquiring into abuses; in controlling the royal administration; in impeaching and bringing to punishment bad ministers; and in defining and upholding their own immunities and privileges.

Hallam has admirably sketched the principal circumstances in the polity of England at the accession of the House of Tudor to the crown.

"The essential checks upon the royal authority were five in number:—1. The "king could levy no sort of new tax upon his people, except by the grant of his "parliament, consisting as well of bishops and mitred abbots, or lords spiritual, and "of hereditary peers or temporal lords, who sat and voted promiscuously in the same "chamber, as of representatives from the freeholders of each county, and from the "burgesses of many towns and less considerable places, forming the lower or com-"mons' house. 2. The previous assent and authority of the same assembly was "necessary for every new law, whether of a general or temporal nature. 3. No "man could be committed to prison but by a legal warrant specifying his offence; "and by an usage nearly tantamount to constitutional right, he must be speedily "brought to trial by means of regular sessions of gaol-delivery. 4. The fact of "guilt or innocence on a criminal charge was determined in a public court, and in "the county where the offence was alleged to have occurred, by a jury of twelve men, "from whose unanimous verdict no appeal could be made. Civil rights, so far as "they depended on questions of fact, were subject to the same decision. 5. The "officers and servants of the Crown, violating the personal liberty or other right of "the subject, might be sued in an action for damages, to be assessed by a jury, or, "in some cases, were liable to criminal process; nor could they plead any warrant "or command in their justification, not even the direct order of the king.

"The peers alone, a small body varying from about fifty to eighty persons, enjoyed "the privileges of aristocracy; which, except that of sitting in parliament, were not "very considerable, far less oppressive. All below them, even their children, were "commoners, and in the eye of the law equal to each other. In the gradation of "ranks, which, if not legally recognised, must still subsist through the necessary "inequalities of birth and wealth, we find the gentry or principal landholders, many "of them distinguished by knighthood, and all by bearing coat armour, but without "any exclusive privilege; the yeomanry, or small freeholders and farmers, a very "numerous and respectable body, some occupying their own estates, some those of "landlords; the burgesses and inferior inhabitants of trading towns; and, lastly, "the peasantry and labourers. Of these, in earlier times, a considerable part, though "not perhaps so very large a proportion as is usually taken for granted, had been in "the ignominious state of villeinage, incapable of possessing property but at the will "of their lords. They had however gradually been raised above this servitude; many "had acquired a stable possession of lands under the name of copyholders; and the "condition of mere villeinage was become rare."

The gradual progress of the free principles of our constitution is no longer to be traced under the Tudors, with the same regularity which is observable under the Plantagenets, from John's reign downwards. There seems at first sight to be a reaction towards despotism; but this appearance of degeneracy is only on the surface. Slavish things were said and done in high places, and there was a dearth of measures of

improvement, not because the nation had grown false-hearted to itself, or feeble-hearted; but because the race of its former leaders in struggles for liberty now no longer supplied it with chieftains, and the orders of society whence the new reformers were to spring, had not yet acquired full importance and self-reliance. The dreadful civil wars of York and Lancaster had hewn the Barons of England down to a scanty and scared remnant; which the subtle policy of Henry VII. and the resolute ferocity of Henry VIII. had tended more and more to weaken. But deep thought and bold inquiry were active throughout the nation, under the mighty impulses given to the mind by the general diffusion of the art of printing, by the revival of the study of the classics, by the exciting interest of the great geographical discoveries effected about this period, and, above all, by the Reformation. Our Parliaments were, indeed, disgracefully submissive under the two last Henrys. Such was the shameful facility with which verdicts of guilty were then obtained from juries in state prosecutions, principally through the iniquitous system of fining and imprisoning any juror who dared to return a verdict against the wish of the Crown;—the judges, in their application and exposition of the criminal law, were such servile tools of the Sovereign; and human life was lavished on the scaffold with such savage prodigality, that we cannot be surprised that while the peerage ceased to furnish hereditary tribunes of the people, men of inferior position shrank at first from coming forward as state martyrs:

> "Nec civis erat qui libera posset
> "Verba animi proferre et vitam impendere vero."

Thus it was that the Court of Star-Chamber (as the old court of the king's Concilium Ordinarium was now called) exercised an extensive and anomalous jurisdiction, by means of which men were arbitrarily fined or imprisoned, and often sentenced to cruel mutilations, for any alleged misconduct, which the lords and prelates of the Council or any minister of the Crown might think fit to impute to them. Thus, too, the subject's money was frequently extorted without Parliamentary assent, under the name of benevolences or loans. These things and other violences were endured to an extent which, under the Plantagenets, would have met with firm remonstrance, if not with armed resistance. But the independent power of the gentry and of the wealthier portions of the middle classes was steadily, though silently, increasing; and under the last three Tudors we find the House of Commons gradually resuming the firm free tone and bearing, and the resolution to maintain and work out the rights of the people, which the great Barons formerly displayed at Runnymede and Lewes. Under Elizabeth the popular party in the House of Commons was organised and active; and more than once successful in its efforts at state reform. Much, indeed, in her reign was endured for her sake, and not for want of a knowledge of its unconstitutional character, or of spirit to resist it. Many a haughty speech and many a harsh act of Elizabeth's was forgiven and forgotten by those who thought of the true English heart and daring of the Queen, whom they had seen cheering her troops at Tilbury; who had defied the spiritual thunders of the Vatican, and the

more perilous thunders of the Armada; who had sent out Drake, Raleigh, Cavendish, Hawkins, and Frobisher, to beard England's foes and spread England's fame beyond the southern and western waves. But when the imbecile though insolent Stuarts came to our throne, and made our national honour a by-word abroad, while at home they paraded each most offensive claim to arbitrary power in the most offensive manner, no such patriotic forbearance could be expected. Fortunate for England, indeed, it was that two such weak and worthless princes as the first James and Charles reigned next after Elizabeth; that we had not a succession of active and prosperous sovereigns, under whom overgrown prerogative might have been allowed to take too deep root, while the national liberties perished amidst the blaze of the national glory.

The first two Parliaments of Charles I. had been hastily dismissed by him in petulant discontent, because they adhered to the old constitutional plan of making the grant of supplies depend upon the redress of grievances. Those grievances were actively continued by the Crown and its ministers; some of them being the arbitrary billeting of soldiers, the forcing of loans to the King, under the title of benevolences, the imprisoning those who refused to lend, several of whom, on suing out their writ of Habeas Corpus, were, in defiance of it, remanded to prison.

Still, with whatever rigour unparliamentary methods of getting money were resorted to, Charles found, as the early Anglo-Norman kings had found, that no tyranny could extort so much from the nation, as could be gained from it, if its consent to the levy was first obtained. His third Parliament was therefore summoned, which met in March 1628, and continued with one prorogation till March 1629. Wentworth (who had not yet apostatized), Selden, Pym, Holles, Coke, Eliot, and Hampden were of this Parliament, and other men of energy and ability, intent "on vindicating our ancient vital liberties, by reinforcing our ancient laws "made by our ancestors; by setting forth such a character of them "as no licentious spirit should dare to enter upon them."* Charles endeavoured to soothe them with vague promises; but Sir Edward Coke warned them that general words were no sufficient satisfaction for particular grievances. "Did ever Parliament rely on messages. The King "must speak by a record, and in particulars, and not in generals. Let "us put up a Petition of Right; not that I distrust the King, but "that we cannot take his trust save in a Parliamentary way."

The Petition of Right was accordingly drawn up by the Commons. The Lords proposed in a conference to add the following clause:—"We "humbly present this petition to your Majesty, not only with a care of "preserving our own liberties, but with due regard to leave entire that "*sovereign power* with which your Majesty is entrusted for the pro-"tection, safety, and happiness of your people." The leaders of the Commons saw clearly the dangerous effect of this insidious stipulation in favour of the royal prerogative, and peremptorily refused to concur in the amendment. After considerable discussion the Peers gave way, and the bill having passed both houses as the bill, the whole bill, and

* Speech of Wentworth.

nothing but the bill, awaited only the royal assent to become law, and "to form a memorable era in the English Government." *

On the second of June the Peers were assembled, the Commons summoned, and the King appeared in the House of Lords to give his answer in Parliament to the bill. But, to the surprise of all men, Charles, instead of using the well-known ancient form of words by which such a bill receives the royal assent, addressed the Parliament and told them, "The King willeth that right be done according to the laws and "customs of the realm, and that the statutes be put in due execution, "that his subjects may have no cause to complain of any wrong or op- "pression contrary to their just rights and liberties; to the preserva- "tion whereof he holds himself in conscience as well obliged, as of his "prerogative."

The Commons returned highly incensed with this evasive circumlocution. They forthwith began to assail the favourites of the Crown, and impeached a Dr. Manwaring, who had preached a sermon, which had afterwards been printed by the King's command, in which discourse the right divine of kings to deal as they pleased with their subjects' property on emergencies, whether Parliament consented or not, and the duty of passive obedience in the subject, were openly and unreservedly maintained. The Commons procured the trial and condemnation of this sacerdotal satellite of arbitrary power, and were proceeding to assail others higher in Charles's councils, when the King's obstinacy at length gave way, and the Petition of Right received the royal assent in the customary form of Norman French, and this second great solemn declaration of the liberties of Englishmen was declared to be the law of the land, among the general rejoicings of the nation.

PETITION OF RIGHT.

3 CAR. I. c. 1.

The Petition exhibited to His Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

To the King's Most Excellent Majesty.

Humbly shew unto our sovereign lord the king, the lords spiritual and temporal, and commons in parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I., commonly called *Statutum de tallagio non concedendo*,† that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will, and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of

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* Hume.

† This supposed statute found a place among our records very early, and its recognition by the Petition of Right gave it *thenceforth* the authority of a statute. But Blackstone, in his work on the Charters, has shown that it was originally nothing more than an intended compendium of the Confirmatio Chartarum.—See too, Guizot, "Essais," p. 311, n.; and Hallam's "Supplemental Notes," p. 306.

the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament:

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give utterance before your privy council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your majesty, or your privy council, against the laws and free customs of the realm:

III. And whereas also by the statute called "The Great Charter of the Liberties of England," it is declared and enacted, That no freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land:

IV. And in the eight-and-twentieth year of the reign of King Edward III., it was declared and enacted by authority of parliament, that no man of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law:

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause shewed; and when for their deliverance they were brought before your justices by your majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to the law:

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people:

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that no man should be forejudged of life or limb against the form of the great charter and the law of the land; and by the said great charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: And whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your majesty's subjects have been by colour of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX. And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before-mentioned, be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent majesty as their rights and liberties, according to the laws and statutes of this realm; and that your majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty, and the prosperity of this kingdom.

Quâ quidem petitione lectâ et plenius intellectâ per dictum dominum regem tantum est responsum in pleno parliamento, viz., Soit droit fait comme est desiré.

There is another Act of a subsequent Parliament of this reign, by which the Court of Star-Chamber was abolished; part of which deserves citation.

16 Car. I. c. 10.

INTITULED "AN ACT FOR THE REGULATING OF THE PRIVY COUNCIL, AND FOR TAKING AWAY THE COURT COMMONLY CALLED THE STAR-CHAMBER."

Whereas by the great charter many times confirmed in parliament, it is enacted, that no freeman shall be taken or imprisoned, or disseised of his freehold or liberties, or free customs, or be outlawed or exiled or otherwise destroyed, and that the king will not pass upon him, or condemn him, but by lawful judgment of his peers, or by the law of the land; and by another statute made in the fifth year of the reign of King Edward III., it is enacted that no man shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seized into the king's hands, against the form of the great charter, and the law of the land; and by another statute made in the five-and-twentieth year of the reign of the same king Edward III., it is accorded, assented, and established, that none shall be taken by petition or suggestion made to the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done in due manner, or by process made by writ original at the [illegible] and that none be put out of his franchise or freehold, unless he be [illegible] to answer, and forejudged of the same by the course of the law,

the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament:

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give utterance before your privy council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your majesty, or your privy council, against the laws and free customs of the realm:

III. And whereas also by the statute called "The Great Charter of the Liberties of England," it is declared and enacted, That no freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land:

IV. And in the eight-and-twentieth year of the reign of King Edward III., it was declared and enacted by authority of parliament, that no man of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law:

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause shewed; and when for their deliverance they were brought before your justices by your majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to the law:

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people:

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III., it is declared and enacted, that no man should be forejudged of life or limb against the form of the great charter and the law of the land; and by the said great charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: And whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial:

VIII. By pretext whereof some of your majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed:]

IX. And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before-mentioned, be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent majesty as their rights and liberties, according to the laws and statutes of this realm; and that your majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty, and the prosperity of this kingdom.

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and if anything be done against the same, it shall be redressed and holden for none: and by another statute made in the eight-and-twentieth year of the reign of the same King Edward III., it is amongst other things enacted, that no man of what estate or condition soever he be, shall be put out of his lands or tenements, nor taken nor imprisoned, nor disinherited, without being brought in to answer by due process of law: and by another statute made in the two-and-fortieth year of the reign of the said King Edward III., it is enacted, that no man be put to answer, without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land, and if anything be done to the contrary, it shall be void in law, and holden for error: and by another statute made in the six-and-thirtieth year of the same king Edward III., it is amongst other things enacted, that all pleas which shall be pleaded in any courts before any the king's justices, or in his other places, or before any of his other ministers, or in the courts and places of any other lords within the realm, shall be entered and enrolled in Latin: and whereas by the statute made in the third year of king Henry VII., power is given to the chancellor, the lord treasurer of England for the time being, and the keeper of the king's privy seal, or two of them, calling unto them a bishop and a temporal lord of the king's most honourable council, and the two chief justices of the King's Bench and Common Pleas for the time being, or other two justices in their absence to proceed as in that act is expressed, for the punishment of some particular offences therein mentioned; and by the statute made in the one-and-twentieth year of King Henry VIII., the president of the council is associated to join with the Lord Chancellor and other judges in the said statute of the 3rd of Henry VII., mentioned; but the said judges have not kept themselves to the points limited by the said statutes, but have undertaken to punish where no law doth warrant, and to make decrees for things having no such authority, and to inflict heavier punishments than by any law is warranted.

And forasmuch as all matters examinable or determinable before the said judges, or in the court commonly called the Star-Chamber, may have their proper remedy and redress, and their due punishment and correction, by the common law of the land, and in the ordinary course of justice elsewhere; and forasmuch as the reasons and motives inducing the erection and continuance of that court do now cease: and the proceedings, censures, and decrees of that court have by experience been found to be an intolerable burden to the subjects, and the means to introduce an arbitrary power and government; and forasmuch as the council-table hath of late times assumed unto itself a power to intermeddle in civil causes and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject, contrary to the law of the land and the rights and privileges of the subject, by which great and manifold mischiefs and inconveniencies have arisen and happened, and much incertainty by means of such proceedings hath been conceived concerning men's rights and estates; for settling whereof, and preventing the like in time to come:

Be it ordained and enacted by the authority of this present parliament, that the said court commonly called the Star-Chamber, and all jurisdiction, power, and authority belonging unto, or exercised in the same court, or by any the judges, officers, or ministers thereof, be from the first day of August in the year of our Lord God one thousand six hundred forty and one, clearly and absolutely dissolved, taken away, and determined.

It scarcely falls within the province, and certainly is not within the limits, of the present work, to narrate or discuss the events of the revolutionary period, which extends from Charles I.'s attempt to seize the five members, to the restoration of royalty in 1660. Of the statutes passed in the reign of Charles II., several deserve mention on account of their constitutional importance. The 12 Car. 2, c. 24, abolished military tenures altogether, converting them into common freeholds, and thus swept away those feudal rights of the Crown to wardships, primer seisins, aids, homages, &c., which had long been so burdensome to the nobility and gentry, who held lands by military tenure.

But it is remarkable, and it shows how early the landholders began to shift the burden of taxation off their own shoulders upon those of the general community, that the compensation voted to the Crown for the loss of these sources of revenue, was not a permanent tax on lands formerly held in chivalry (which was proposed by some members, and was undoubtedly based on just principle), but an excise upon certain articles of general and necessary consumption. The first regular Parliament of Charles passed an important Act to prevent the legislature being overawed, and their votes coerced in future by riotous and seditious mobs under the guise of petitioners. That statute (13 Car. 2, st. 1, c. 5) is still in force, and enacts, that "no person or persons whatsoever shall "repair to his Majesty or both or either of the Houses of Parliament, upon "pretence of presenting or delivering any petition, complaint, remonstrance, declaration, or other addresses, accompanied with excessive "number of people, nor at any one time with above the number of ten "persons."

The Habeas Corpus Act, also, which was passed in this reign (31 Car. 2, c. 2), is of great constitutional value, though it by no means introduced any new principle into our system, or formed any such epoch in the acquisition of the national liberties, as some writers represent. But it made the remedies against arbitrary imprisonment short, certain, and obtainable at all times and in all cases. The statute itself enacts—

"1. That on complaint and request in writing by or on behalf of any person "committed and charged with any crime (unless committed for treason or felony expressed in the warrant; or as accessory or on suspicion of being accessory before "the fact to any petit treason or felony; or upon suspicion of such petit treason or "felony plainly expressed in the warrant; or unless he is convicted or charged in "execution by legal process), the Lord Chancellor or any of the judges in vacation, "upon viewing a copy of the warrant, or affidavit that a copy is denied, shall (unless "the party has neglected for two terms to apply to any court for his enlargement) "award a *habeas corpus* for such prisoner, returnable immediately before himself or "any other of the judges; and upon the return made shall discharge the party, if "bailable, upon giving security to appear and answer to the accusation in the proper "court of judicature. 2. That such writs shall be indorsed as granted in pursuance "of this act, and signed by the person awarding them. 3. That the writ shall be "returned, and the prisoner brought up within a limited time according to the "distance, not exceeding in any case twenty days. 4. That officers and keepers "neglecting to make due returns, or not delivering to the prisoner or his agent "within six hours after demand a copy of the warrant of commitment, or shifting "the custody of the prisoner from one to another without sufficient reason or "authority (specified in the act), shall for the first offence forfeit £100, and for the "second offence £200 to the party grieved, and be disabled to hold his office. "5. That no person once delivered by *habeas corpus* shall be re-committed for the "same offence, on penalty of £500. 6. That every person committed for treason or "felony, shall if he requires it, the first week of the next term, or the first day "of the next session of *oyer* and *terminer*, be indicted in that term or session, or else "admitted to bail, unless the queen's witnesses cannot be produced at that time; and "if acquitted, or not indicted and tried in the second term or session, he shall be "discharged from his imprisonment for such imputed offence; but that no person, "after the assizes shall be open for the county in which he is detained, shall be "removed by *habeas corpus* till after the assizes are ended, but shall be left to the "justice of the judges of assize. 7. That any such prisoner may move for and "obtain his *habeas corpus* as well out of the Chancery or Exchequer, as out of the "King's Bench or Common Pleas, and the Lord Chancellor or judges denying the "same on sight of the warrant or oath that the same is refused, forfeits severally to

"the party grieved the sum of £500. 8. That this writ of *habeas corpus* shall run "into the counties palatine, cinque ports, and other privileged places, and the Islands "of Jersey and Guernsey. 9. That no inhabitant of England (except persons "contracting or convicts praying to be transported, or having committed some "capital offence in the place to which they are sent) shall be sent prisoner to "Scotland, Ireland, Jersey, Guernsey, or any places beyond the seas within or "without the queen's dominions, on pain that the party committing, his advisers, "aiders, and assistants, shall forfeit to the party aggrieved a sum not less than £500, "to be recovered with treble costs; shall be disabled to bear any office of trust or "profit; shall incur the penalties of *præmunire*; and shall be incapable of the "queen's pardon."—3 *Black. Com.* 137.*

These enactments, and especially the Habeas Corpus Act, make the name of Charles II. figure creditably in our statute-book. But practically the reign of this prince, and that of his successor, were one scene of royal infamy and illegality. Even Hume, the artful and unscrupulous partisan of the House of Stuart, confesses of James II. that "almost "the whole of this short reign consists of attempts always imprudent, "often illegal, sometimes both, against whatever was most loved and "revered by the nation." Some of the grievances whereof the English of those days complained most bitterly, those namely which arose from the king's open encouragement of Roman Catholics, in defiance of the laws respecting members of that church, and his evident zeal for making that creed the established religion of the land, in lieu of the Protestant, may appear comparatively unimportant to some modern readers, unless they bear in mind the condition of Europe at that time, and how completely the bigotry and the ambition of Louis XIV. had identified the progress of Catholicism with the progress of despotic principles. James was the hireling of Louis, and was animated by the same feelings. He strove to gain a simultaneous triumph over Church and State in England, and to lay the national faith beneath the Pope's feet, while he cast down the national liberties beneath his own.

The natural consequence of this was, that a spirit of ultra-Protestantism mingled with and became an animating principle of the opposition, which was raised against his assaults upon the Constitution. The political struggle became necessarily for the time a religious one. And in that age the successful maintenance of Protestant ascendancy was no mere sectarian triumph, but involved the rescue and the advancement of Constitutional Freedom.

The Preamble of the BILL OF RIGHTS narrates clearly, worthily, and fully the violation of the known laws, and free institutions of the realm, which the late king had committed. And as the scope of this little treatise does not permit a narrative here of the proceedings and dis-

* Such is the substance of that great and important statute. But as the Act is confined to imprisonments on *criminal*, or supposed *criminal*, charges, the 56 Geo. 3, c. 100, was passed, extending the power of issuing a writ of *habeas corpus* to other cases. By this statute it is enacted, that where any person shall be confined or restrained of his liberty, (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit), it shall and may be lawful for any judge or baron, upon complaint made to him by or on behalf of the party so confined or restrained, if it shall appear by affidavit or affirmation that there is probable and reasonable ground for such complaint, to award in vacation time a writ of *habeas corpus ad subjiciendum* returnable immediately.

cussion of the Convention Parliament, I will at once transcribe this most important of all modern statutes.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND SETTLING THE SUCCESSION OF THE CROWN.

WHEREAS the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully, and freely representing all the estates of the people of this realm, did upon the thirteenth day of February, in the year of our Lord one thousand six hundred eighty-eight, present unto their Majesties, then called and known by the names and stile of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons, in the words following; viz.—

WHEREAS the late King James II., by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom:

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament:
2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power:
3. By issuing and causing to be executed a commission under the great seal for erecting a court called, The Court of Commissioners for Ecclesiastical Causes.
4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.
5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.
6. By causing several good subjects, being Protestants, to be disarmed, at the same time when Papists were both armed and employed, contrary to law.
7. By violating the freedom of election of members to serve in parliament.
8. By prosecutions in the court of King's Bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.
9. And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.
10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.
11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.
12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm:

And whereas the said late King James II. having abdicated the government, and the throne being thereby vacant, his highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being Protestants; and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two-and-twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters, elections have been accordingly made:

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representation of this nation, taking into their most serious consideration the best

means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare:—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.
2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.
3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.
4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.
5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.*
6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.
7. That the subjects which are Protestants, may have arms for their defence suitable to their conditions, and as allowed by law.†
8. That election of members of parliament ought to be free.
9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.
10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.
11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.
12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.
13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example:

To which demand of their rights they are particularly encouraged by the declaration of his highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein:

Having therefore an entire confidence, that his said highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties.

II. The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, that William and Mary Prince and Princess of Orange be, and be declared, King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the

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* This does not repeal the statute of Charles II. against *tumultuous* petitioning.—See R. *v.* Gordon, Doug. Rep. 592.

† "In connection with the rights of personal liberty and security, is the right of the subject to carry arms for his defence, suitable to his condition and degree, and such as are allowed by law. There is an ancient enactment, however, [2 Edw. III. c. 3], against going armed under such circumstances as may tend to terrify the people, or indicate an intention of disturbing the public peace; and by a modern statute [60 Geo. III. c.1] the training persons without lawful authority to the use of arms is prohibited, and any justice is authorised to disperse such assemblies of persons as he may find engaged in that occupation, and to arrest any of the persons present.—*Stephen's New Commentaries*, vol. i., p. 140.

survivor of them; and that the sole and full exercise of the regal power be only in, and executed by the said Prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue to the princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear, That I will be faithful, and bear true allegiance, to their Majesties King William and Queen Mary:

So help me God.

I, A. B., do swear, That I do from my heart abhor, detest, and abjure as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority ecclesiastical or spiritual, within this realm:

So help me God.

IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

V. And thereupon their Majesties were pleased, That the said lords spiritual and temporal, and commons, being the two houses of parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties, of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said lords spiritual and temporal, and commons, in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

VII. And the said lords spiritual and temporal, and commons, seriously considering how it hath pleased Almighty God, in his marvellous providence, and merciful goodness to this nation, to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, that King James II. having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, King and Queen of England, France and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the said realms, with all honours, stiles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining, are most fully, rightfully, and entirely invested and incorporated, united and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation

doth, under God, wholly consist and depend, the said lords spiritual and temporal, and commons, do beseech their Majesties that it may be enacted, established and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the survivor of them, during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in, and executed by his Majesty, in the names of both their Majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty; and for default of such issue, to her royal highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of his said Majesty: And thereunto the said lords spiritual and temporal, and commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities for ever; and do faithfully promise, That they will stand to, maintain, and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever, that shall attempt anything to the contrary.

IX. And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom, to be governed by a Popish prince, or by any King or Queen marrying a Papist; the said lords spiritual and temporal, and commons, do further pray that it may be enacted, That all and every person and persons that is, are or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be, and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every King and Queen of this realm, who at any time hereafter shall come to and succeed in the imperial crown of this kingdom, shall on the first day of the meeting of the first parliament, next after his or her coming to the crown, sitting in his or her throne in the house of peers, in the presence of the lords and commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen) make, subscribe, and audibly repeat the declaration mentioned in the statute made in the thirteenth year of the reign of King Charles II., intituled, "An Act for the more effectual preserving the King's person and government, by disabling Papists from sitting in either house of parliament." But if it shall happen, that such King or Queen, upon his or her succession to the crown of this realm, shall be under the age of twelve years, then every such King or Queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of the meeting of the first parliament as aforesaid, which shall first happen after such King or Queen shall have attained the said age of twelve years.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon, granted before the three-

and-twentieth day of October, in the year of our Lord one thousand six hundred eighty nine shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other than as if this act had never been made.

The Act of Settlement, which was passed in the last year of King William's reign, and from which the House of Hanover derives its title to the Crown of England, added some constitutional guarantees for the rights of the people, which seemed to have been omitted in the Bill of Rights.

Eight articles were inserted in the Act of Settlement, to take effect only from the commencement of the new limitation to the House of Hanover. These articles are the following :—

That whosoever shall hereafter come to the possession of this crown, shall join in communion with the Church of England as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of England, Scotland or Ireland, without consent of parliament.

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.

That, after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen,—except such as are born of English parents), shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the crown, to himself, or to any other or others in trust for him.

That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

That, after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established ; but, upon the address of both houses of parliament, it may be lawful to remove them.

That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament.

"The first of these provisions was well adapted to obviate the jealousy which the "succession of a new dynasty, bred in a protestant church not altogether agreeing "with our own, might excite in our susceptible nation. A similar apprehension of "foreign government produced the second article, which so far limits the royal "prerogative that any minister who could be proved to have advised or abetted a "declaration of war in the specified contingency would be criminally responsible to "parliament. The third article was repealed very soon after the accession of "George I."*

"With respect to the fourth article, it should be observed that, according to the "original constitution of our monarchy, the king had his privy council composed of "the great officers of state, and of such others as he should summon to it, bound by "an oath of fidelity and secrecy, by whom all affairs of weight, whether as to "domestic or exterior policy, were debated for the most part in his presence, and "determined, agreeably to his pleasure, by the vote of the major part.

* Hallam's Const. Hist., vol. iii. p. 246.

"As early as the reign of Charles I. the privy council, even as it was then constituted, was too numerous for the practical administration of supreme power, and a select portion of that body, were, under the name of 'cabinet council,' selected as more confidential advisers of the crown, and were previously consulted as to the policy to be pursued respecting such measures as were to come under discussion.

"During the reign of William, this distinction of the cabinet from the privy council, and the exclusion of the latter from all business of state became more fully established. 'The method is this,' says a member in debate: 'things are 'concerted in the cabinet, and then brought to the council; such a thing is re-'solved in the cabinet, and brought and put on them for their assent, without showing 'any of the reasons. This has not been the method of England. If this method be, 'you will never know who gives advice.'

"It was endeavoured to restore the ancient principle by the fourth provision in the Act of Settlement, that, after the accession of the House of Hanover, all resolutions as to government should be debated in the privy council, and signed by those present. But, from some unknown motives, this clause never came into operation, being repealed by the statute, 4 Anne, c. 8; 6 Anne, c. 7.

"The opposition were desirous of reducing this influence, and the first instance of exclusion from the House of Commons, in consequence of employment, occurs in 1694, when, on the formation of a new board of revenue, for managing the stamp duties, its members were disqualified from having seats in the House:—and by Stat. 11 & 12 William III., c. 2, s. 150, a similar disability was extended to the commissioners, and some other officers of excise.

"It was soon perceived that the clause excluding all official personages from the House, was highly impracticable; and a repeal of the article took place in 1706, the commons being still determined to preserve the principle of limitation as to the number of placemen that should be capacitated.

"The House of Commons introduced into the 'Act of Security' a clause enumerating various persons who should be eligible to parliament; the principal officers of state, the commissioners of treasury and admiralty, and a limited number of other placemen; this was successfully objected to by the lords, but two most important provisions were established.

"First, that every member of the House of Commons, accepting an office under the crown, except a higher commission in the army, shall vacate his seat, and a new writ shall issue.

"Secondly, persons holding offices created since the 25th of October, 1705, were incapacitated from being elected, or re-elected members of parliament. They excluded at the same time all such as held pensions during the pleasure of the crown; and, to check the multiplication of placemen, enacted, that no greater number of commissioners should be appointed to execute any office, than had been employed in its execution at some time before that parliament."*

It is to be observed that the Act of Settlement, while it gave a new dynasty the right to reign in England, solemnly acknowledged on that solemn occasion the existence and authority of all the subjects' rights. The conclusion of the Act of Settlement is as follows:—

"IV. And whereas the laws of England are the birthright of the people thereof, and all the Kings and Queens, who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: the said lords spiritual and temporal, and commons, do therefore further humbly pray, That all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by his Majesty, by and with the advice and consent of the said lords spiritual and temporal, and commons, and by authority of the same, ratified and confirmed accordingly."'

It would be superfluous to point out categorically how completely

* See Hallam, and Stephens's "De Lolme."

this Act, the Petition of Right and the Bill of Rights, recognise and confirm the primary great constitutional principles which the Great Charter first established. But, before proceeding to the Reform Bill of 1833 (which seems next in constitutional importance), it may be useful to consider shortly the actual state of the English Government and nation soon after the Revolution of 1688, and during the early part of the last century.

With the expulsion of the Stuarts the long struggle between the king and the people ended: and the substitution on the English throne of a line of princes, who derived their title confessedly through the nation's will, extinguished all those absurd dogmas as to the right divine of kings, the patriarchal principle of government, the duty of the subject to submit to all royal orders, and the like, which had previously been never-failing pretexts for sanctioning or excusing violations of constitutional right, and graspings after absolute power. Indeed, since the reign of William, the royal heads of our limited monarchy have exercised little personal interference in state affairs. Our kings and queens have reigned, but the government of the country has been carried on by ministers, who have been and necessarily must be dependent on Parliament for their tenure of office. Not that the personal opinions or character of the sovereign of this country ever can be absolutely unimportant. "His habits and tastes "are always matters of notoriety, and often of imitation. Access to "his society is always coveted. He may give that access in a manner "useful, or mischievous, or absolutely indifferent. He may call to his "court those who are most distinguished by genius or by knowledge; "or those whose only merit is their birth or their station; or parasites, "buffoons, or profligates. Even in the appointment of ministers, he "may sometimes exercise a sort of selection. He is sometimes able "to delay for a short period the fall of those whom he likes, and the "accession of those whom he dislikes; and he can sometimes perma-"nently exclude an individual." *

He can indeed do more than this, provided parties are nearly balanced in the country. In such a state of things the personal adherents of the sovereign, (and a band more or less numerous of such there will always be,) can turn the scale, and determine the adoption or rejection of measures of the greatest moment both in foreign and domestic policy. The influence exercised by George III., in very critical times, by means of "the king's friends" is notorious. The power of dissolving Parliament is also a strong engine in the sovereign's hands, whereby he may protect himself from ministers personally distasteful to him, and gain at least the chance of seeing a House of Commons returned whose feelings may harmonise with his own. But if the national will, as expressed by the two legislative assemblies, is decided and strong on one side of a question, and a dissolution of Parliament only causes a solemn popular ratification of the expression of that will in the House of Commons, the sovereign is utterly powerless. Being thus powerless, he is properly irresponsible. He is at the

* Edinburgh Review of Lord Brougham's "Political Philosophy."

head, but others lead; and they alone who lead are answerable for the course taken.

Our House of Peers at the Revolution of 1688 consisted of about 150 temporal, and 26 bishops. I have before indicated the causes that originally made the English an hereditary Peerage, and gradually it became a fixed maxim that the individual whom the sovereign summoned by his royal writ to the House of Lords, acquired thereby not only the right to sit in the particular Parliament during which the writ issued, but a right for himself and heirs to become and be thenceforth a peer of the realm. Thenceforth every peer of full age has been held entitled to his writ of summons at the commencement of every Parliament. But although it is not in the power of the Crown to sway the deliberations of the House of Lords by excluding old peers, the prerogative of creating new temporal peers at discretion has been retained by the Crown, both before and after the Revolution, though a strong effort was made in George I.'s reign to cut down this important constitutional prerogative. A bill limiting the House of Lords after a very small increase should have been made to its then actual numbers, was brought in by Lord Sunderland's ministry, and carried easily through the Upper House, but lost in the Commons, fortunately for the interests of all orders in the state, but especially for the permanent interest and existence of that very body, which the bill was designed with short-sighted policy to strengthen.

The House of Commons continued to consist of knights of the shires, and representatives of the cities and boroughs. The mode in which particular boroughs acquired, lost, or regained the right of sending representatives, has become a topic of comparatively little practical interest since the Reform Bill. It seems probable that under the Plantagenets every town of any consequence received a writ directing it to return burgesses to Parliament; but it is clear that from the very commencement of our representative system some very inconsiderable places returned members. Sometimes the negligence or partiality of the sheriffs omitted towns that had formerly received writs; and frequently new boroughs, as they grew into importance, or from some private motive, acquired the franchise of election. Gradually it became a recognised principle that the right of a borough to return members having once existed can never be lost: and none of the 111 cities and towns which returned members at the accession of Henry VIII. intermitted their privilege down to 1832.

"Henry VIII. gave a remarkable proof that no part of the kingdom, subject to "the English laws and parliamentary burthens, ought to want its representation, "by extending the right of election to the whole of Wales, the counties of Chester "and Monmouth, and even the towns of Berwick and Calais. It might be possible "to trace the reason, though I have never met with any, why the county of Durham "was passed over. The attachment of those northern parts to popery seems as "likely as any other. Thirty-three were thus added to the Commons. Edward VI. "created fourteen boroughs, and restored ten that had disused their privilege. "Mary added twenty-one, Elizabeth sixty, and James twenty-seven members.

"These accessions to the popular chamber of parliament after the reign of Henry "VIII. were by no means derived from a popular principle, such as had influenced "its earlier constitution. We may account perhaps on this ground for the writs "addressed to a very few towns, such as Westminster. But the design of that great

"influx of new members from petty boroughs, which began in the short reigns of "Edward and Mary, and continued under Elizabeth, must have been to secure the "authority of government, especially in the successive revolutions of religion. Five "towns only in Cornwall made returns at the accession of Edward VI.; twenty-one "at the death of Elizabeth. But the county of Cornwall was more immediately "subject to a coercive influence, through the indefinite and oppressive jurisdiction "of the stannary court. Similar motives, if we could discover the secrets of those "governments, doubtless operated in most other cases. A slight difficulty seems to "have been raised in 1563 about the introduction of representatives from eight new "boroughs at once by charters from the crown, but was soon waived with the com- "plaisance usual in those times. Many of the towns, which had abandoned their "privilege at a time when they were compelled to the payment of daily wages to "their members during the session, were now desirous of recovering it, when that "burthen had ceased and the franchise had become valuable. And the house, out of "favour to popular rights, laid it down in the reign of James I. as a principle, that "every town, which has at any time returned members to parliament, is entitled to "a writ as a matter of course. The speaker accordingly issued writs to Hertford, "Pomfret, Ilchester, and some other places, on their petition. The restorations "of boroughs in this manner, down to 1641, are fifteen in number. Charles I., "whose temper inspired him rather with a systematic abhorrence of parliaments "than with any notion of managing them by influence, created no new boroughs. "The right indeed would certainly have been disputed, however frequently exercised. "In 1673 the county and city of Durham, which had strangely been unrepresented, "to so late an æra, were raised by act of parliament to the privileges of their fellow- "subjects. About the same time a charter was granted to the town of Newark, "enabling it to return two burgesses. It passed with some little objection at the "time; but four years afterwards, after two debates, it was carried on the question, "by 125 to 73, that by virtue of the charter granted to the town of Newark, it "hath right to send burgesses to serve in parliament. Notwithstanding this "apparent recognition of the king's prerogative to summon burgesses from a town "not previously represented, no later instance of its exercise has occurred; and it "would unquestionably have been resisted by the commons, not, as is vulgarly "supposed, because the act of union with Scotland limited the English members to "513, (which is not the case,) but upon the broad maxims of exclusive privilege in "matters relating to their own body, which the house was become powerful "enough to assert against the crown." *

There is considerable doubt as to the class of persons by whom the electoral franchise in boroughs was originally exercised.

The four principal conflicting theories on the subject are stated at length, and their respective claims to our adoption are fairly summed up by Hallam. Sir James Mackintosh thought that from the earliest times to which borough voters can be traced, they were of the same variety of classes as in later times before the Reform Bill. "In some "places the freemen; in others, the officers of a corporation; else- "where, freeholders, burgage tenants, inhabitants contributing to public "expense, or other inhabitants with scarcely sufficient qualification of "property to afford a presumption of fixed residency; these, and com- "binations of various sorts of them, were the principal classes among "whom the elective franchise was in the earliest times shared." As the power of the House of Commons increased, the composition of the electoral bodies became an object of growing attention to the Crown, and, especially under the last Tudors and the Stuarts, sedulous efforts were made to mould and influence the municipal composition of those parliamentary boroughs which were also corporate cities and towns. By

* Hallam's Constitutional History, vol. iii. p. 353.

machinations of this kind, by the silent effect of time in reducing many places which had once been populous into wretched hamlets, and by many boroughs having (as has before been mentioned) been originally selected by the Crown to return members on account of their liability to Crown influence, a great number of the Parliamentary boroughs became the mere instruments of powerful individuals, who owned the few houses in them which gave a right of voting, or who purchased the suffrages of a little clique of self-elected electors. These close, or rotten boroughs as they were familiarly termed, gave great facilities for the increase of the indirect influence of the Crown, but they also favoured the ambition of wealthy subjects; and it is to be borne in mind that they peculiarly aided the efforts of the commercial classes to raise themselves into an equality with the territorial aristocracy.* This last, the landed interest, made in the ninth year of Queen Anne a great struggle to secure its ascendancy, by excluding the rest of the community from Parliament. With this view the landed gentry obtained the passing of an Act by which every member of the Commons, except those for the universities, was required to possess, if a knight of the shire, a freehold or copyhold estate of clear £600 per annum, and, if representative of a borough, a like landed qualification to the amount of £300 per annum. There had been an old statute of Henry VI., requiring county representatives to be chosen from "notable knights, or such as shall be able to be knights," (*i. e.* have freehold to the amount of £40 per annum,) but this statute had fallen into desuetude, and the new law went far beyond it, and would, if effectually carried out, have converted our House of Commons into an odious deputation of landed oligarchs. This law, however, has been systematically evaded, nor are the provisions of the modern statute,† which has made personal as well as real property qualify its owner for parliament, much more efficacious in attaining the only proper object of such restrictions, that, namely, of preventing needy adventurers from obtaining seats in the House. Neither of these Acts having required a member to possess the stipulated qualification during all the time that he continues to be member, it always has been and is enough to procure for the occasion a colourable transfer from some person who really holds the requisite property, which transfer is cancelled or reversed directly the member has taken his seat. This practice may be almost said to have received the sanction of the legislature by what took place when the 33 Geo. 2, c. 30, was passed. That statute, which first made it necessary for the newly elected member to swear to his qualification on taking his seat, contained, when it was first brought forward, a clause requiring every member who should at any time during the continuance of the parliament to which he was elected, sell, dispose of, alien, or in anywise encumber the estate which made his qualification, to deliver in on oath a statement for a new or further qualification before he should again presume to sit or vote as a member of the House of Commons. But the legislature rejected this clause; and thus deliberately sanctioned the system by which men of no

* See Hallam's "Constitutional History," vol. iii. p. 402.
† 1 & 2 Vict. c. 48.

property, but who can find wealthy friends with confidence in their honour, obtain seats as English members.*

The laws which regulate the duration of Parliament, belong also to the period between the revolution and the accession of George III.; and are not only of great constitutional importance, but have given rise to one of the practical political questions of the present time. There is an ancient statute of Edward II.'s reign (5 E. 2, c. 29 †), which is principally a confirmation of Magna Charta, but which contains at its close the following additional provisions:—"Forasmuch as many people be "aggrieved by the king's ministers against right, in respect to which "grievances no one can recover without a common parliament; we do "ordain that the king shall *hold* a parliament once in the year, or twice "if need be." And a statute of the next reign (4 Edw. 3, c. 14), ordains that "a parliament shall be holden every year once, and more often if need be." These Acts are generally supposed to have only provided that there should be an annual meeting of parliament, and not that there should be a new parliament every year. Certainly these statutes had been in either sense little heeded in practice, and there was no explicit enactment as to how often there should be a new parliament until the Triennial Bill of 1642 was passed by the Long Parliament. After the restoration this salutary statute was repealed at the king's special request; and one of Charles II.'s parliaments, which was found eminently loyal and corruptible, was prolonged in mischievous existence for the enormous period of seventeen years. In the year after the Great Revolution a bill was brought in and passed both Houses to limit the duration of parliament to three years. King William refused his assent to it; but the Commons renewed their exertions; the repeated exercise of the royal veto would have been perilous to its possessor, and a Triennial Bill became law in 1694. But in 1717 it was deemed unsafe by the ministers of the newly arrived Hanoverian King to risk a general election, and the celebrated Septennial Act was passed, which has hitherto stood firm against the repeated attempts that have been made to obtain a return to triennial parliaments.

Not wishing to complicate this work by the discussion of Scotch or Irish topics, I purposely pass over the Act of Union with Scotland, as I shall presently pass over the similar Act with regard to Ireland.

The influence of the middle classes, which had been greatly developed and augmented during the period between the Great Revolution and the accession of George III., increased in a rapidly accelerated ratio during the long and eventful reign of the last-mentioned sovereign.

"The extension of commerce and manufactures, after the treaty of "Paris, in 1763, was rapid and unprecedented. Large manufacturing "and commercial towns arose in all parts of the country, the inhabitants "of which were but little influenced by those powerful ties which gene-"rally connect an agricultural population with the superior land-owners. "With the increase of opulence and population consequent upon the "increase of manufactures and trade, education and the desire of political

* See Smollett, Book iii. c. 13, sect. 56.
† Statutes of the Realm, i. 165.

"information became more generally diffused. The press acquired "great influence. Political journals were established in every consider- "able town, in which the conduct of public men and the policy of all the "measures of government were freely canvassed. The improved facili- "ties of internal communication afforded the means of conveying intel- "ligence with astonishing rapidity from one part of the country to "another; so that most persons began to take an interest, not only in "what was going on around them, but in public affairs, and in the con- "cerns of the remotest part of the empire. Prejudices and established "opinions of all sorts were openly attacked. The structure of the "political fabric, and the rights and privileges of the different ranks and "orders of society, were subjected to a searching investigation, and their "claim to respect began to be tried by reference to their usefulness rather "than their antiquity. Public opinion, expressed through the medium of "a thousand different channels, became a check on the executive scarcely "inferior in efficacy to the existence of a popular assembly. Under "such circumstances we need not wonder that the enterprising citizens "of great manufacturing and commercial towns, as Manchester, Birming- "ham, Sheffield, &c., felt daily more dissatisfied at being denied the "privilege possessed by so many inferior boroughs, of sending representa- "tives to the House of Commons. They began, during the American "war, publicly to manifest their impatience at such exclusion; and, "deriving confidence from their numbers, their wealth, and their "intelligence, they prosecuted their claims to participate directly in the "privileges of the constitution with a boldness which would probably "have been long ago successful, if the progress of peaceful reformation "had not been arrested by the violence of the French revolution. The "alarms occasioned by that event, and the war that grew out of it, "suspended for a while the demand for a remodelling of the repre- "sentative system. But after the peace of 1815, these solicitations "were renewed; and the reasonableness of the claim, united with the "great accession of popular influence and the excitement occasioned by "the movements on the Continent in 1830, made it imprudent any "longer to disregard it."*

The passing of the Reform Bill is an event too recent to make any detailed narration respecting it necessary or proper here. But there are one or two facts connected with the mode in which that great measure was carried, which have been of permanent importance, and deserve a brief allusion. One of these is the system of organised agitation, which was then successfully employed for the first time in *England*, to obtain a political object. Another is the mode in which the acquiescence of the hereditary branch of the legislature was obtained, namely, by a personal request from the sovereign to the most active opponents of the measure to abstain from voting, lest their continued opposition to the popular will should force the sovereign to swamp the House of Lords by a huge creation of new peers for the purpose of out-voting the old ones. A third is the indisputable fact that a very slight concession of Reform at an early period would have satisfied

* Macculloch.

most reformers, and have obviated the bringing forward of the sweeping measure which ultimately became the law of the land. Another fact, and not the least in importance, is the extent to which the dreaded bill has proved a Conservative measure, and the proof it has given that men who, while unfranchised, are the noisy opponents of all establishments, will, when they receive the franchise, often become their steadiest and most zealous supporters.

I pass no opinion as to whether these facts are to be deplored or rejoiced over. I merely draw attention to them as facts which have existed, exist, and will exist, whether we like them or not, and which are calculated to throw important light on the coming political struggles, which equally, whether we like it or not, are sure to take place ere long in this country.

The provisions of the Reform Bill, both as regards the places that return members, and the electoral qualification, are too familiar to require setting out in these pages. It is enough to remind the reader that by that statute the number of county members for England and Wales, was increased from ninety-five to one hundred and fifty-nine; that the number of members for the metropolis and its adjacent districts was augmented to eighteen; that fifty-six parliamentary boroughs were wholly, and thirty-one partially disfranchised; and that forty-three new boroughs were created, twenty-two of which return two members, and twenty-one, one member each. And (subject to some local and some temporary variations), the right of voting for parliamentary representatives, now pertains in counties to all forty-shilling freeholders, except freeholders for life in certain cases, where the amount of yearly value required is £10, to £10 copyholders, to £10 leaseholders, if the term of the lease is for sixty years, and to £50 tenants-at-will: while the electoral suffrage in cities and boroughs is given to the £10 householders.

The effect of the Reform Bill undoubtedly has been to throw preponderating power into the hands of the middle classes of this country. And under the term Middle Classes, it is here meant to include all those who are below the landed aristocracy, and above such artisans and labourers as depend on manual labour for subsistence. The aristocracy have retained great direct constitutional power, and still greater indirect influence; but the recent abolition of the Corn-Laws has conclusively proved that the middle classes, if united and energetic, are irresistible. I am not in any way passing an opinion as to the merits or demerits of the late Free Trade legislation, but I merely call attention to the indisputable fact that it was the work of the middle classes, against the wish and in despite of the opposition of the great bulk of the territorial aristocracy. And there is also another great fact connected with it, which merits observation, namely, that it was effected by the middle classes, without the co-operation of the lower. It is well known that the Chartists uniformly thwarted and opposed the Anti-Corn-Law League, nor were the masses in any place consistently active in its support. In this respect the Anti-Corn-Law movement is more important than the agitation which produced the Reform Bill. The middle class reformers in 1832, won the Reform Bill *with* the assistance and *through* the assistance of the masses; but

in 1846 the middle classes by themselves carried Free Trade. It is not meant by this that the Free Trade measures did not receive the support of many members of the higher orders, but that they were substantially the work of the men of the middle ranks.

But, although the middle classes, when brought to combine for a great practical purpose by years of agitation, and by skilful organization backed by lavish employment of wealth and ability, can thus make their wills irresistibly heard in the council of the nation, the old landed aristocracy retains enormous strength, and opposes to every measure of change a huge resisting power, of which the active hostility is less formidable than its "*Vis Inertiæ*," its ever present obstructiveness; while the popular force acts by impulse only, and requires either special excitement or long-continued agitation to rouse it into life. By the extent to which the power of the English aristocracy has survived the Reform Bill, the predictions of the violent partisans and the violent opponents of that measure have been equally contradicted. Not that there ever was or is now any antipathy between the higher and middle orders in this country. The majority of English professional men, traders and yeomen, are willing, nay, are desirous that the aristocracy should be splendidly powerful. But still the feeling is general amongst them, and continually gains ground, that the landed aristocracy exercises an undue amount of influence in our legislation, and that the excess of that influence is felt in many mischievous ways. Thus it is a common subject of complaint that the burden of taxation is thrown in a very unfair proportion upon the middle classes, especially by the system of subjecting all personal property to heavy legacy and probate duties, from which the estates of the landed gentry and nobility are wholly free. Another tax, which is called temporary, but which is sadly sure to be permanent, the Income Tax, inflicts the most iniquitous oppression upon the middle classes, as compared with the lower as well as with the upper, that a minister ever yet ventured on. It shows, indeed, how firmly statesmen trust in the loyalty of the classes which they venture thus to burden. There are other topics of complaint, such as the working of the present electoral system, which leaves great numbers of men of intelligence, education, and some property, wholly disfranchised. But it is needless to recapitulate such subjects in this place, both by reason of their notoriety, and on account of the fact that the middle classes have the means in their hands, constitutionally, to protect themselves and to redress the grievances which they complain of; although it is undoubtedly an evil and a hardship on them that they cannot do this without leagues and agitations and all their accompanying annoyances.

While the desire and determination are rapidly increasing among the middle classes to effect further Constitutional Reform, it may be safely asserted that the wish for organic changes is at present rare among them. We feel, as Cromwell was warned that our ancestors felt—that our old limited hereditary monarchy is a blessing to the country, if it be only on account of the quiet and good order which its principle of succession insures, compared with the mischief which would follow if the post of chief magistrate among us were to be intrigued for by the

ringleaders of clubs, or fought for by ambitious soldiers. With regard to the House of Lords, the necessity of a second legislative Chamber is almost universally admitted; nor could we frame one that would work better than our present Peerage. Such a second Chamber, in order to be of the least use, must not be a mere duplicate of the House of Commons, but must, if elective, be, like the American Senate, elected by a more limited and opulent body of voters than that which elects the House of Commons. But it is self-evident that in this country an upper House, elected solely by the wealthy class of the community, would be infinitely more oligarchical and obstructive to Reform, than the House of Lords has ever been. The House of Lords, indeed, at present, though theoretically co-equal with the House of Commons, is notoriously and avowedly the weakest of the two, and gives way when any serious and deliberate difference of opinion takes place. All that it now does, and all that it claims to do, is to check hasty legislation, and to give an opportunity for an appeal to the people by a dissolution of Parliament. If the nation then confirm the voice of its former representatives, by re-electing them, or by returning men of similar principles, the Lords own that they are bound to give way to the clear and deliberate expression of the popular will. The debates in the House of Peers on the recent Free Trade measures, have been of great constitutional interest in this point of view. The champions in the upper House of the landed aristocracy, though they asserted with truth that they had a majority of the Peers, who in their hearts were in favour of the Corn Laws, never held out the idea or the hope that the House of Lords could permanently stop the Free Trade movement, supposing the nation to be steadily resolved on forwarding it. All that they claimed was an opportunity of taking the sense of the people on the subject by rejecting the proposed act once, and compelling the Ministers to try a general election of the House of Commons. Lord Stanley's words on this subject are so explicit that I will quote a short passage from the speech of that eminent party-leader in opposition to the second reading of the Corn Importation Bill, May 25th, 1846.

"My Lords, if I know anything of the constitutional value of this "House, it is to interpose a salutary obstacle to rash and inconsiderate "legislation; it is to protect the people from the consequences of "their own imprudence. It never has been the course of this House "to resist a continued and deliberately expressed public opinion. Your "Lordships always have bowed, and always will bow, to the expression "of such an opinion; but it is yours to check hasty legislation leading "to irreparable evils." *

Of course when parties are at all equally balanced in the country, as was the case during the violent but temporary reaction towards Conservatism, between 1834 and 1842, the House of Lords can peremptorily determine the fate of any measure. Nor can it be thought wrong that they should do so. The middle classes have no right to expect their will to be obeyed, while that will is divided or doubtful. But

* Hansard, vol. 86, p. 1175.

when their will is emphatically and unmistakeably expressed, the Peerage owns that it must defer to it, and the most strenuous middle-class Democrat can hardly wish for more.

It is from the masses, from the millions of artisans and labourers, that the new formidable movements originate which compel attention; and the present position, duties, and *rights* of the masses in respect to the English Constitution are things, which it is neither morally just nor politically expedient to neglect.

This practical inquiry is closely connected with the investigations which have occupied the preceding portions of this work. We have traced the origin of the English Constitution, and the first development of its principles, at a time when the newly formed English nation consisted of not more than two or three millions of human beings; one half at least of whom were in an abject state of serfdom, while the other half, the freemen of the land, the "Liberi homines" of Magna Charta, were divided into proud and powerful barons, each girt with his band of armed retainers and personal dependents; into smaller landowners equal in birth but inferior in possession to the great peers; into a class of still smaller owners of land, our free yeomanry,

> "England's peculiar and appropriate sons,
> "Known in no other land,"—

and into citizens and burgesses who were beginning to revive the old Roman system of municipal self-government, and to re-awaken the spirit of commercial energy and enterprise. First framed in those troubled times, and for that scanty and ill-assorted population, our constitution has expanded with the expanse of civilisation, numbers, and power; and while it has preserved all its integral parts and all its primary attributes, it has become the government of and for us, the middle classes of the sixteen millions of this mighty English nation, whose language, laws, arts, arms, and institutions are over-spreading every region of the world. But its gravest trial yet remains, and seems likely to be brought to a speedy issue. Can our Constitution adapt itself to the growing claims of the lower orders, as it has to the growing claims of the middle orders; or, must it be either guarded by force against their assaults, or surrendered to them as not worth being preserved at such a price?—In other words, what is the new democracy? Are its existence and growth necessarily incompatible with the maintenance of our Constitution? And, if so, is the new democracy to be coerced or the Constitution to be abandoned? These are questions which it is impossible long to shirk, and it is better to discuss them with pens than with pikes.

Great as is the contrast between the position and importance of the middle classes at this time, compared with their situation a century ago, we see changes still more momentous when we compare the lower orders of the present day with the lower classes of the former epoch. The political *status* of the middle classes has been improved, but the political *status* of the lower orders has been created; and their might, like that of the Aloidæ, while yet in its infancy, fills the higher powers with consternation. No one, during the constitutional struggles which the

great Barons headed, thought about the politics of the villeins of the country. No one of the gentry, the yeomanry, and the tradesmen who strove against the Stuarts, ever claimed political power for the labourers and common artificers of the time. Nothing indeed can exceed the scorn with which Milton, and other writers of that period "*Pro populo Anglicano*," speak of the mere "*Plebs*." To come down to times nearer to our own—to the first years of the reign of George III. —eighty years ago, though political controversy was hot enough, and though the territorial aristocracy was rapidly giving way to the new men from the central files, no one ever heard or dreamed of the lower orders meddling with politics. No statesmen thought that ploughmen and journeymen mechanics even knew what the Parliamentary franchise meant, much less that they wished for it, and least of all that they had any possible right to it.

But things are wholly altered since then; and we live in a very different age to that in which Blackstone could complacently remark to his well-bred audience at Oxford, that inquiries into the foundation of rights "would be useless, and even troublesome, in common life," and that "it was well that the mass of mankind should obey the laws, "when made, without scrutinising too minutely the reasons for "making them." * Such apathetic submission to the ordinances of their supposed betters no longer exists, and never can exist again, among our lower orders. There were no Chartists or Trades' Unions when Blackstone wrote. There could not be such bodies, for society then contained not their materials. The rudiments of education were rarely to be found among the inferior artisans of our large towns, and were almost wholly unknown among the peasantry. There must have been then, as now, much poverty, much suffering, much repining at their own lot, much envy of the more affluent and powerful; but the idea of mutual combination and joint efforts to obtain the right of voting and the power of altering the system of government, was never heard of among them. The huge growth of the populations of our manufacturing towns, the general increase in the numbers of the whole people, the progress of education (lamentably imperfect as it has been, especially for the best objects of education), the springing up of a cheap press and a cheap literature, the universal ferment caused in men's minds by the American War of Independence, and by the uprising of the fierce democracy of France—these and other well-known causes have made the lower orders of Englishmen what we now behold them. The habit of combination which they have acquired, of itself proves the greatness of the change. This new tendency of our masses to act in organised bodies, has been fully proved by the thousands who joined in the political unions, which preceded, and in the trades' unions which followed, the passing of the Reform Bill. The hundreds of thousands who are now enrolled as Chartists confirm it. And we see indeed this formidable method followed up for any purpose which interests any considerable number of operatives in any of our large towns. This habit of combining, of planning, of debating, of

* Blackstone's Commentaries.

organising, and conducting the diplomatic and fiscal machinery, which every association, however small, requires, is at once the result and the instrument of political education. The masses that have acquired it are sure to be politically active, whether their activity be for good or for evil.

Deeply disappointed with the effect of the Reform Bill, which they had helped to win for others, great bodies of the working men throughout the country, especially in the towns, have for the last ten years leagued themselves as supporters of a new Reform Bill of their own, under the name of the People's Charter. This document was drawn up in 1837, by six members of Parliament and six working men, and these "Articuli Plebis" claim the following well-known six points as the rights of the people :—1st. Universal Suffrage ; 2nd. Annual Parliaments ; 3rd. Equal Representation by Electoral Districts ; 4th. Vote by Ballot ; 5th. No Property Qualification ; and 6th. Payment of Members.

Is this new Charter constitutional ?

In the first place we may observe that in its terms it in no way violates the constitution. It neither professes to attack the Crown, nor the House of Lords. The letter of no one of its articles contravenes any of those primary principles which we have deduced from the original Magna Charta of King John, and traced through our subsequent constitutional history. But the letter of a proposed measure is not solely to be considered. We must examine its spirit also ; and if we find that its certain effect would be to render the future peaceful working of our constitution impossible, we are bound to reject it as unconstitutional.

Two of the points of the People's Charter—the abolition of the property qualification for members, and the restoration of the system of members being paid wages by their constituents, are perfectly unobjectionable, whatever may be thought of their unimportance. Annual parliaments would be inconvenient, and most lovers of peace and quietness, would think a return to the triennial system enough : but annual parliaments would never cause a revolution. Vote by ballot is a scheme, the importance of which is grossly overrated both by friends and foes. It could do no harm, and might do some good. If, therefore, any great number of the people ask for it, they ought to have it. Indeed, it is a middle class measure, and will probably soon be carried, independently of the Chartists. The Ballot is an attempt to make elections quiet, pure, and harmless to the voters ; and to call such an attempt un-English and unconstitutional, is one of the worst pieces of ignorant cant ever canted in this country. The article of the Charter which requires equal representation by equal electoral districts, as proposed to supersede the whole of the present representative system of counties and boroughs, is open to very grave objections. It would sweep away a host of old local associations and local ties that have beneficially influenced for centuries each shire and each burgher community. It would be a gigantic development of the principle of centralisation, a principle which has been hitherto less admitted into our institutions than into those of any nation, except our

kinsmen the Anglo-Americans; and to the jealous restriction of which our capability for free government is considered to be mainly owing.* It would destroy the representation of the landed interest, which was the primary germ of the House of Commons; for it would swamp the rural votes in nearly every district by a certain preponderance of town electors. But this is not the most important article of the Charter, nor is it the one which its adherents care the most for. It is the claim of Universal Suffrage which they most insist on, and which a lover of the constitution is bound the most peremptorily to oppose. A House of Commons elected by universal suffrage, would, on the first symptom of independent action manifested by the Peers, vote an Upper House useless; and would abrogate it as unceremoniously as was done here in the time of the Rump Parliament, or as was done in Paris a few months ago. The Crown would soon follow the coronets, and we should be cursed with the factions and civil conflicts arising out of the election of a President. Financial difficulties would soon suggest the facility of saving 28 millions of taxes by repudiating the National Debt. At the first step towards such repudiation, our credit and our commerce would be paralysed; and the calamity of national bankruptcy would fall in full weight, not on the landed aristocracy, as some advocates of a gradual application of the sponge strangely suppose, but on the middle classes, who form nine-tenths of the national creditors. It is needless to pursue the sketch of ruin and degradation farther. No educated and reflecting man, unless he is either a Communist, or a Red Republican, can look on the grant of universal suffrage as less than an act not merely of constitutional but of national suicide.

On the other hand, the prospect is painful to a generous, and formidable to a prudent mind, of seeing the working classes grow gradually more and more alienated from the upper and middle orders; nor is the consciousness pleasing that we live amid the sullen hatred of a majority of our countrymen, whom our superior organisation alone prevents from exacting from us what they deem their rights, in somewhat the same manner as that in which the barons extorted the first Great Charter from King John, at Runnymede. As for the hordes of rogues and ruffians whom society always contains amid its dregs, and who come forward in all seasons of excitement, under pretext of political purposes, but with no real aim save that of plunder, we know that their enmity must be expected, and must be sternly coerced by every settled government. And we must expect to be obliged to apply almost equal coercion to those fanatics and dupes, who under the title of Communists, Socialists, Owenites, Fourrierites, &c., preach doctrines subversive of all social security and all moral obligation. These men are the enemies not of any particular system of government, but of society itself. They are its voluntary outlaws. They are beyond the pale of every law, human and divine, which they seek to destroy; and when they intrude into the fold of civilisation, they deserve neither parley nor mercy. But it is with far different feelings that we should regard the sober,

* See De Tocqueville's work on "America," *passim*.

honest, hard-working millions, whose manual toil heaps up our national wealth; who contribute to our taxes in the price of every necessary of life; who read, and study, and discuss the political events of the day with growing interest and intelligence; but who, because they do not rent a £10 house in some favoured borough, or hold a forty-shilling freehold, are deprived of all voice and influence in the choice of the people's Parliamentary representatives.

How are these men's claims to be reconciled with the safety of our institutions? I answer, Consult the spirit of the Constitution; bear in mind the proved value of its primary institutions; bear in mind, also, its principle of expansion and development; and the true solution of these difficulties will be seen to consist in the adoption of some measures, which shall accord a share of political power to the classes which have been newly awakened into political life, without sacrificing to them the other orders of the community. Let what De Montfort did for the citizens and burghers, be now done for the artisans and labourers. Let it be done on the old constitutional plan of not letting the New crush the Old, but of renovating and strengthening the Old by the incorporation of the New. Do not sacrifice the Constitution to the lower orders, but give the lower orders a place in the Constitution.

He who gives these general counsels, must expect to be questioned as to what practical means he recommends for carrying them out. I venture on the following reply:—

Let the present representative system of counties and boroughs be in the main preserved; but out of the representatives of the smaller and notoriously corrupt boroughs, and of the smaller counties, pare away fifty members. Divide Great Britain into fifty electoral districts, according to the population, and let each of these districts return one member, for whom no property qualification should be required. Let him be paid wages by his constituents, in order to give working men the chance of becoming members. Give a vote in the election of the district member to every male aged twenty-one years, who has no vote for any county or borough, who has resided for a year in the district, who has not been convicted of any criminal offence for the last seven years, or received parish relief for the last year, and who is able to read and write. Let there be an annual registration of district electors, according to these qualifications, and require of every district elector, at the time of registration, the payment of sixpence, to defray the member's wages, and the expense of registration and election. Let the voting be by Ballot.

This would give a vote to every man in the community who is really desirous, and really fit to possess one. It by no means follows that the fifty district members would be all men sprung from the lower orders, or all vehement partisans of the democracy. Judging from the usual workings of human nature, a large portion of them would be very much the reverse. But even if fifty strong champions of the masses were thus to find their way into the House, such a proportion could never jeopardise the state, by forcing on ultra-democratical or anarchical measures. And certainly on many subjects, on those for instance of Emigration, of the Poor-Laws, of the Factory Question, of Educational

Grants, and indeed on every social and financial question, the presence and the expressed opinion in the House, of real men of the people, would be most important and beneficial.

It is a truism with political writers, that a representative system of government ought to be based not on property only, and not on numbers only, but on a ratio blended of the two. Chartism goes into the extreme of requiring numbers only to be considered in representation: our present system certainly verges towards the other extreme, by excluding vast numbers from any representation at all. The plan which I have indicated, would give these numbers a share in the Constitution, without suffering pauperism to swamp property, and without levelling intelligence beneath brute ignorance. It would not break up our old territorial and local classifications; it would not check the workings of the old systems with which we are familiar; it would not diminish the prerogative of the sovereign, or the privilege of the peer; it would threaten neither the security nor the natural influence of wealth. But it would change hundreds and thousands of sullen malcontents into loyal subjects, zealous to protect the Constitution in which they were allowed to share. It would strengthen and purify our House of Commons; and blend upper, middle, and lower classes in cheerful co-operation for the general good.

The ancient Athenians had a national oath by which each generation of citizens bound themselves to defend the state, and to hand it down to their descendants *better than they had found it*:—

Ἀμυνεῖν τῇ πατρίδι καὶ ἀμείνω παραδώσειν.

That oath was conceived in the truest spirit of Conservatism; and in its spirit should each Englishman act who truly venerates the Constitution of his country, and wishes to preserve it unimpaired. For that purpose, while religiously guarding its primary institutions from the experiments of the mere theorist and the assaults of the destroyer, he must work out its vital law of growth and development, and endeavour to apply its principles to the emergencies of the present time, as his ancestors did to the emergencies of the times gone by. Finality is a delusion, and Revolutionary Change is madness. The only safe course is the good old track of Constitutional progress by means of Constitutional Reform.

THE END.

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